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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Charu Desai,)	
Plaintiff,)	
)	
)	
vs.)	Case No. 19-cv-10520-TSH
)	
)	
UMass Memorial Medical Group)	
and Max Rosen,)	
Defendants.)	

BEFORE: The Honorable Timothy S. Hillman

Jury Trial Day 5

United States District Court
Courtroom No. 2
595 Main Street
Worcester, Massachusetts
December 8, 2022

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Timothy S. Hillman, United States District Judge, United States District Court, District of Massachusetts, at the Donohue Federal Building & United States Courthouse, 595 Main Street, Worcester, Massachusetts, on December 8, 2022.)

THE CLERK: All rise.

Court is now open. You may be seated.

THE COURT: Good morning.

MR. KILROY: Good morning, your Honor.

THE COURT: Mr. Kolman?

MR. KOLMAN: Yes.

THE COURT: Please.

MR. KOLMAN: Thank you, your Honor.

Yesterday I was approached by Mr. Kartik Trivedi, who is in the courtroom today, who told me that based on his observations over a number of days, it was apparent to him that defense counsel was signalling during the dep- -- during the testimony of and specifically the cross-examination of Dr. Rosen directly to Dr. Rosen.

THE COURT: So by the cross you mean your examination?

MR. KOLMAN: Exactly, your Honor.

THE COURT: Yeah. Uh-huh.

1 MR. KOLMAN: And that he was -- and that this
2 communication was not just simply from Mr. Kilroy. It was also
3 from Mr. Wakefield and consisted of the same gestures that he
4 saw repeated numerous times in addition to Dr. Rosen
5 continually turning to counsel, his counsel, and then turning
6 away.

7 Obviously, when I heard that, I went directly to your
8 Honor's clerk, reported it for obvious reasons, which
9 I -- which if your Honor wishes me to explain, I will, on the
10 record. I'm happy to do so from a legal standpoint.

11 From that standpoint, Judge, it is obvious that, in my
12 view, if this, in fact, occurred, and I did not see it because
13 I was concentrating on doing my job in terms of
14 cross-examination, then it fundamentally materially undermined
15 the integrity of the trial and of this Court and of the
16 viability of the witness on the stand to be available and
17 completely free from any outside influence, most specifically
18 outside influence from his own counsel.

19 And if indeed this occurred, then it constitutes an
20 extremely severe violation of a whole slew of various
21 requirements.

22 More specifically, perhaps, it violates the
23 expectation of the plaintiff that she will get a fair trial and
24 of the Court itself that it will be an institution free and
25 fair in its -- in its proceedings, both substantively and

1 procedurally.

2 THE COURT: So before we get into the nuts and bolts,
3 are you making an application for me to do what?

4 MR. KOLMAN: I'm making -- your Honor, I would ask
5 that your Honor have at least a minimal evidentiary hearing
6 under oath.

7 THE COURT: Well, for what purpose though? I --

8 MR. KOLMAN: In order to --

9 THE COURT: So there are several things that I need
10 to --

11 MR. KOLMAN: Sure.

12 THE COURT: -- to do here based on your allegations.
13 One is as an officer of the Court, and another is as the judge
14 who's presiding at this trial.

15 So with respect to my responsibilities as the judge
16 presiding, are you making an application?

17 MR. KOLMAN: Making an application for a mistrial,
18 Judge.

19 THE COURT: Okay. All right.

20 I'm going to need you to reduce that to writing.

21 Are you going to call this witness?

22 MR. KOLMAN: I am.

23 THE COURT: Okay. So here's what we're going to do.
24 We're going to go until nine o'clock; and then it's jury time,
25 and then we'll figure out if we're not done when we'll finish,

1 okay?

2 MR. KOLMAN: Can I call Dr. Rosen as on cross?

3 THE COURT: As -- as a witness in the --

4 MR. KOLMAN: As a witness in this.

5 THE COURT: On the mistrial?

6 MR. KOLMAN: Yes, your Honor.

7 THE COURT: Well, let's do this witness, and then
8 we'll see.

9 MR. KOLMAN: Okay. I'm going to call Mr. Kartik
10 Trivedi to the stand.

11 THE CLERK: Please raise your right hand.

12 Do you solemnly swear the testimony you are about to
13 give this Court will be the truth, the whole truth, and nothing
14 but the truth so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated. State your name and
17 spell your name for the record.

18 THE WITNESS: Kartik Trivedi, K-A-R-T-I-K, T --

19 THE COURT: Hold on.

20 Can I have the first one first, please.

21 THE WITNESS: Sure.

22 THE COURT: Spell it.

23 THE WITNESS: K-A-R-T-I-K.

24 THE COURT: And last name?

25 THE WITNESS: T-R-I-V-E-D, as in David, I.

1 THE COURT: K-A-R-T-I-K T-R-I-U-E-D-I?

2 THE WITNESS: T-R-I-V, as in Victor, E as in --

3 THE COURT: Oh, V.

4 THE WITNESS: Yes.

5 THE COURT: Okay. Got it. Thank you.

6 THE WITNESS: Thank you.

7 EXAMINATION

8 BY MR. KOLMAN:

9 Q. Mr. Trivedi, were you in the courtroom yesterday?

10 A. Yes, I was.

11 Q. Were you in the courtroom as an observer?

12 A. Yes.

13 Q. Have you been an observer in this courtroom for a number
14 of days?

15 A. Since the trial began, yes.

16 Q. And where in the courtroom have you regularly sat?

17 A. I was sitting on the extreme right-hand corner on the
18 second bench.

19 Yesterday, I was on the third bench.

20 Q. Did you have a free and clear view of defense counsel?

21 A. I did.

22 Q. And how long were you in the Court for?

23 A. Throughout the trial.

24 Q. And then after the trial yesterday, did you approach me?

25 A. Yes.

1 Q. And what did you tell me, and -- what did you tell me and
2 how did you tell me?

3 THE COURT: I don't really care about that. I'd
4 rather hear what he saw and what he did.

5 BY MR. KOLMAN:

6 Q. What did you see?

7 Tell the Court what you saw.

8 A. On what -- I mean, starting on day 2, when I was sitting
9 over there, I was watching --

10 THE COURT: So by day 2, you mean yesterday?

11 THE WITNESS: No, sir, on Tuesday.

12 THE COURT: Tuesday, thank you.

13 THE WITNESS: On Tuesday, yes. I was watching the
14 trial over there, and I was observing Dr. Rosen. As I was
15 watching him, my view was obviously -- doc -- Attorney Kilroy
16 and Attorney Reid, I could see that, because I was way back
17 there.

18 And initially when I was watching Dr. Rosen testify, I
19 kept on seeing him looking directly at the attorneys; and the
20 second day, I was seeing Attorney Kilroy, who was sitting, I
21 believe, on this side where Attorney Reid is sitting, and he
22 kept on -- he kept on moving his hands, kept on doing gestures,
23 going like this (indicating), going like this (indicating),
24 going like this (indicating), kept on going like this
25 (indicating).

1 I didn't think he was -- he was very fidgety at the
2 time.

3 THE COURT: Hold on. Hold on. I'm just trying to --
4 who was doing that?

5 THE WITNESS: Attorney Kilroy was doing a lot of hand
6 gestures when Dr. Rosen was speaking, and Dr. Rosen was looking
7 towards him. I did make a notation of what I saw, which was
8 also on day 3, which was yesterday. I did see when Attorney
9 Kolman was cross-examining Dr. Rosen, at that point I did see
10 Attorney Reid do gestures, going like this (indicating), which
11 is around 1:45 p.m. They both were going like this
12 (indicating). And Attorney Kilroy at one point --

13 THE COURT: So hold up.

14 THE WITNESS: Yeah.

15 THE COURT: Hold up. By Attorney Reid, do you mean
16 Attorney Wakefield?

17 THE WITNESS: Attorney Wakefield. I apologize, yes.

18 THE COURT: Yeah. So repeat that again as to who was
19 doing what, please.

20 THE WITNESS: So -- yes, Attorney Wakefield was doing
21 a lot of gesturing. I felt as if he was doing a lot of
22 gestures. He was scratching his neck. And Attorney Kilroy was
23 also continuously going (indicating) with his fingers on his
24 scalp. He was going like that (indicating). And towards the
25 end during the Dr. Ferrucci email, I did see Attorney Kilroy do

1 this gesture (indicating). This was around 1:45, I believe,
2 1:47 p.m., towards the end of the trial.

3 And I was also watching Attorney Reid who kept
4 on -- he did this (indicating), and he was going like this
5 (indicating). And I saw this throughout the trial. I didn't
6 think much of it. On day 2, I saw a lot of it, but I wasn't
7 sure.

8 And on day 3, I was watching Dr. Rosen, who was
9 looking directly at the counsel, and he was talking, and I did
10 see at that point what I just mentioned, and my -- I did
11 mention to -- I just went to Attorney Kolman, and I mentioned
12 it to him, and he brought it to attention straightaway after he
13 heard what I said. He said, Are you a hundred percent sure of
14 what you saw? This is a serious matter. And I said, Yes, I
15 am. And I'm also aware that there are cameras over here, too.
16 So I did -- I'm very confident in what I saw.

17 THE COURT: Well, there are cameras, but they don't
18 work.

19 Do you have any other -- do you have questions?

20 MR. KOLMAN: No, your Honor. I -- I don't have any
21 more questions.

22 MR. KILROY: Absolutely not, your Honor.

23 THE COURT: Okay. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Did you say you wanted to call Dr. Rosen?

1 MR. KOLMAN: I did.

2 THE COURT: Come on up, Doc.

3 Thank you.

4 Is it Mr. Trivedi, Trivedi, did I say that right?

5 THE WITNESS: Yes, sir.

6 THE COURT: Thank you.

7 MR. COMENZO: Good morning.

8 THE COURT: Mr. Comenzo, do you have this one?

9 MR. COMENZO: I have this one, your Honor. Thank you.

10 THE COURT: Okay. Go ahead.

11 EXAMINATION

12 BY MR. COMENZO:

13 Q. Good morning, Dr. Rosen.

14 A. Good morning.

15 Q. My name is Joe Comenzo. I apologize that we've had to
16 come here for this reason.

17 My question is: During the course of -- or questions.
18 During the course of your examination you looked over
19 frequently at counsel.

20 Were -- were you instructed in any way in terms of not
21 what to say, but in terms of the length of the answers that you
22 gave?

23 A. Absolutely not.

24 Q. There was -- was there any instruction at all or any
25 signalling at all for going -- regarding the -- not the content

1 of your testimony, but the form of your testimony?

2 A. Absolutely not.

3 MR. COMENZO: No questions, your Honor.

4 MR. KILROY: No follow-up, your Honor.

5 THE COURT: Thank you.

6 THE WITNESS: Thank you.

7 MR. KOLMAN: Your Honor, I -- I'm not sure whether or
8 not the cameras in this courtroom are on some kind of tape.

9 THE COURT: They're -- there are cameras, but they're
10 not on. We -- and by the way, probably this is for another
11 day, but the cameras were installed close to ten years ago for
12 the Court -- cameras in the courtroom experiment that Chief
13 Justice Roberts wanted to kill before it was born, but we were
14 one of the pilot courts.

15 I will check with the marshals, and they may well have
16 the ability to monitor the proceedings if there's security
17 issues, but my -- my guess, educated guess, is that they're
18 there but not on. But I -- I will run that down very shortly.

19 MR. KOLMAN: Okay. Thank you, your Honor.

20 THE COURT: The -- which -- and again, not for this
21 discussion, cameras in the courtroom is, as you know, a sore
22 subject down at SCOTUS, and all of the Zoom stuff we have been
23 doing has brought it to a head. It's not going to help us here
24 with this issue, but --

25 MR. KOLMAN: I understand.

1 THE COURT: -- as an aside.

2 MR. KOLMAN: Okay.

3 Well, I will --

4 THE COURT: And let me -- let me find out about that.

5 MR. KOLMAN: Okay.

6 THE COURT: But assuming the cameras are not -- were
7 not working, what would you -- tell me what -- what you would
8 have me do. I know you want a mistrial.

9 MR. KOLMAN: Yes, I know that, your Honor.

10 Could I -- could I have just a little time to think
11 about that, Judge?

12 THE COURT: Yeah, of course. Of course.

13 MR. KOLMAN: Thank you.

14 THE COURT: All right.

15 MR. KILROY: May I be heard briefly, your Honor?

16 THE COURT: Sure.

17 MR. KILROY: Your Honor, I have been practicing a
18 quarter century. I have an unblemished record, as does my
19 colleague. I find it extremely offensive that as an officer of
20 the Court, and I am an officer of the Court, that this
21 allegation has been leveled.

22 I would absolutely in no way ever signal a witness. I
23 don't have qualms with the relatives's observation of me doing
24 this (indicating). I did it throughout the entirety of this
25 proceeding at different times. It's a -- it's a resting place

1 for me. It's also so that I -- I look professional in front of
2 the jury.

3 I do have concerns about an allegation being leveled
4 against me by fellow counsel and against my colleague by fellow
5 counsel.

6 I would respectfully request, as there is no evidence
7 to suggest signalling as Mr. -- Dr. Rosen has testified very
8 credibly for the last two days and testified in direct response
9 to questioning that the request for a mistrial be -- be denied
10 summarily.

11 I have no problem if there are tapes of going through
12 the tapes in great detail, but I just want it clear that we
13 take great offense to the accusations, your Honor.

14 THE COURT: Okay.

15 MR. KOLMAN: I would just say that I appreciate
16 Mr. Kilroy's position and would ask him to understand that this
17 allegation comes not from me directly, but comes from someone
18 in the courtroom, and that I was under a -- an obligation, also
19 as an officer of the Court, or be it pro hac'd, to bring this
20 to the Court's attention, and there was no choice.

21 THE COURT: I'm not -- I'm not faulting anybody.

22 You know, I'll check on the cameras.

23 I will say that I think we can all agree that
24 Dr. Rosen was -- Doctor, forgive me, loquacious; and frankly, I
25 think if I ask Dr. Rosen what time it was, he could tell me how

1 to build a watch, so I'm not sure how much signalling is
2 capable of being done.

3 Don't take that in anything other than the spirit in
4 which it was offered, Doctor.

5 DR. ROSEN: Not at all, your Honor.

6 THE COURT: All right. I'll see you guys in 15.

7 MR. KOLMAN: Thank you, Judge.

8 (Recess at 8:46 a.m. until 9:07 a.m.)

9 THE CLERK: All rise.

10 (At 9:07 a.m., the jury entered the courtroom.)

11 THE CLERK: Court is now open. You may be seated.

12 THE COURT: Good morning.

13 JURORS IN UNISON: Good morning.

14 THE COURT: How are you all doing?

15 JUROR: Great.

16 THE COURT: So you know what I'm going to say. Has
17 anybody had any difficulty following my instructions not to
18 discuss the case with anyone?

19 JUROR: No.

20 THE COURT: Has anybody seen, heard, read or overhead?

21 JUROR: No.

22 THE COURT: Is there anything you wish to bring to my
23 attention?

24 So I -- I know Marty and Marianne are so sick of
25 hearing this story, but I'm going to tell it anyway. When I

1 was down in the state court, we tried a case for over three
2 weeks, and it was -- it was a family dispute, and every morning
3 I asked, like I have to do, I asked the jurors the question.
4 The jurors got so sick of it, and then on the final morning
5 they all raised their hands. So don't do that.

6 All right. Mr. Kol- -- I'm sorry. Mr. Wakefield.

7 MR. WAKEFIELD: Very briefly, your Honor.

8 THE COURT: Yes, please. And I think for the third or
9 fourth day, I'm going to remind you you are still under oath.

10 THE WITNESS: Yes, thank you.

11 CONTINUED DIRECT EXAMINATION

12 BY MR. WAKEFIELD:

13 Q. Good morning, Doctor Rosen.

14 A. Good morning.

15 Q. If I can show you a document that's previously admitted as
16 Exhibit 107.

17 Do you recall being asked questions about statements by
18 Dr. Ferrucci in this email yesterday?

19 A. Yes.

20 Q. After you became chair in 2012, did Dr. Ferrucci have any
21 involvement at all in any hiring decisions for the department?

22 A. No, not at all.

23 Q. Have you ever discussed your recruiting efforts or hiring
24 decisions with Dr. Ferrucci at any time?

25 A. No.

1 Q. Since you've been chair, has Dr. Ferrucci had any role or
2 involvement at all in department finances?

3 A. No, not at all.

4 Q. Looking at the email, did you ever tell Dr. Ferrucci that
5 you had an obligation as chair to think about recruiting
6 younger staff for service needs?

7 A. Absolutely not.

8 Q. Did you ever believe you had such an obligation?

9 A. Absolutely not.

10 Q. Did you ever tell Dr. Ferrucci that going off call would
11 involve a significant salary reduction?

12 A. No.

13 Q. Would going off call involve a significant salary
14 reduction?

15 A. It would depend on how much somebody worked. Some people
16 can actually make more money as a per diem than they would as
17 an FTE, depending on how much they worked.

18 Q. Did you ever tell Dr. Ferrucci that you were thinking
19 about a term-limited contract of 12 months?

20 A. No.

21 Q. Did you consider offering Dr. Desai a term-limited
22 contract of 12 months?

23 A. No.

24 Q. Did you discuss academic days with Dr. Ferrucci?

25 A. No.

1 Q. Did you ever discuss the potential recruit from U Penn.
2 with Dr. Ferrucci?

3 A. No.

4 Q. Would it be possible for the reference to next step in the
5 discussion to have related to that candidate in any way?

6 A. No, definitely not.

7 Q. What was the date of this email? Can you please tell me?

8 A. October 11th, 2017.

9 Q. If I could show you a document that previously has been
10 admitted into evidence as Exhibit 101, please.

11 Do you recall being asked questions about this email train
12 yesterday, the day before, with Dr. Rosen?

13 A. Yes.

14 Q. What was the date of the second email in this chain from
15 you to Dr. Tosi and Ms. Streeter?

16 A. October 3rd, 2017.

17 Q. What were you advising them in this email?

18 A. I was telling them that the candidate --

19 MR. KOLMAN: Objection, your Honor.

20 THE COURT: I'm sorry. Repeat the question.

21 BY MR. WAKEFIELD:

22 Q. What were you advising them in this email?

23 THE COURT: Sustained.

24 Q. At the time -- at this time, did you advise Dr. Tosi and
25 Dr. Streeter that the candidate from U Penn. was probably not

1 coming?

2 A. Yes.

3 Q. If I could show you a document that has been previously
4 admitted as Exhibit 343.

5 Look -- looking at your list of hires, did you make any
6 hires around this time?

7 A. I'm sorry. I don't remember the date of that other.

8 MR. KOLMAN: Objection, your Honor.

9 THE COURT: Well, that answer will stand. Let's have
10 another question.

11 MR. WAKEFIELD: Sure. Could you switch back to
12 Exhibit 101, please. Or, I'm sorry, 107.

13 Q. What was the date of the email with Dr. Ferrucci?

14 A. October 11, 2017.

15 Q. Okay. If I can put up for you Exhibit 343 again.

16 And my question was: Did you make any hires around this
17 time?

18 MR. KOLMAN: And my objection is -- I have an
19 objection, your Honor. Beyond the scope.

20 THE COURT: Overruled.

21 THE WITNESS: Yes, it looks like September 30th, 2017,
22 I hired Dr. Patricia Cross.

23 BY MR. WAKEFIELD:

24 Q. How old was Dr. Cross when you hired her on
25 September 30th, 2017?

1 A. She was 64.

2 Q. Was there a time, Dr. Rosen, during the calendar year of
3 2016 that you were not recruiting a chest radiologist?

4 A. No, I have always been recruiting a chest radiologist.

5 Q. Was there a time during the calendar year of 2017 that you
6 were not recruiting a chest radiologist?

7 A. No.

8 Q. Was there a time during the calendar year 2018 that you
9 were not recruiting a chest radiologist?

10 A. No.

11 Q. Are you recruiting chest radiologists today?

12 A. I am.

13 Q. If I could show you a document just to the witness that
14 has been marked for identification as Exhibit 184. Just to the
15 witness.

16 Do you recognize this document, Dr. Rosen?

17 A. Yes.

18 Q. And what is this?

19 A. This is an offer letter to Dr. Maria Barile.

20 MR. WAKEFIELD: Your Honor, I'd like to admit
21 Exhibit 184 into evidence and publish to the jury, please.

22 MR. KOLMAN: No objection.

23 (Exhibit No. 184 was admitted into evidence.)

24 BY MR. WAKEFIELD:

25 Q. Does this letter state when Dr. Barile started working in

1 the department?

2 A. Yes.

3 Q. And what was her start date?

4 A. December 31st, 2018.

5 Q. So she wasn't hired in February or March of 2018 as
6 Mr. Kolman stated yesterday, right?

7 A. Correct.

8 Q. What were Dr. Barile's qualifications for this role?

9 A. Dr. Barile had trained at the Beth Israel Deaconess as a
10 resident, and then she had a -- did a pediatrics -- pediatric
11 radiology fellowship at Children's Hospital, and that was
12 followed by a thoracic radiology fellowship at Brigham and
13 Women's Hospital. So she had all her training in the Harvard
14 Hospital system and had done two fellowships.

15 Q. And we've talked about chest fellowships.

16 Does UMass have a chest fellowship program?

17 A. We do now.

18 Q. Who runs that program?

19 A. Dr. Barile is the fellowship director for that program.

20 MR. WAKEFIELD: No further questions, your Honor.

21 THE COURT: Mr. Kolman, anything on that?

22 MR. KOLMAN: Very briefly.

23 RECROSS EXAMINATION

24 BY MR. KOLMAN:

25 Q. Very briefly. When the young man from Penn. could not

1 come on board, did you have a replacement for him?

2 In other words, when the young man -- well, let me put it
3 this way. When did the young man from Penn. say he couldn't
4 come?

5 A. I'd have -- whatever the date of that email that
6 I -- whatever that date was. Actually sitting here, reading
7 all these dates, I don't want to misspeak. The date of
8 that -- when I just said to -- when I told Dr. Tosi that he was
9 not coming, whatever date that is.

10 Q. Do you know the date?

11 A. To be honest, I have a lot of dates flying around in my
12 head right now, and I don't want to misspeak. I'd be happy to
13 go back and look at the document and give you the exact date.

14 Q. When he couldn't come, did you have -- were you able to
15 recruit someone in his stead?

16 A. I'm always recruiting. The next person that I hired was
17 Dr. Barile.

18 Q. Did he -- with respect to when he told you he couldn't
19 come, you don't have any recollection of when that was; is that
20 correct?

21 MR. WAKEFIELD: Objection, your Honor.

22 THE COURT: Overruled. Do you have a recollection or
23 not?

24 THE WITNESS: I -- I just need to see that, the prior
25 email from 2017. I think it was October of 2017 was that email

1 that I was just shown.

2 BY MR. KOLMAN:

3 Q. And then after he didn't come, what did you do?

4 A. I kept recruiting.

5 Q. Did you find someone?

6 A. The next --

7 Q. Did you replace him?

8 A. The next person that I made an offer to who accepted was
9 Dr. Barile.

10 Q. Was who?

11 A. Dr. Maria Barile.

12 Q. Was that doctor full-time?

13 A. Which doctor?

14 Q. The doctor you just mentioned.

15 A. Dr. Barile?

16 Q. Yes. She -- oh, the next offer you made was to her,
17 correct?

18 A. I don't know if I made subsequent offers between --

19 Q. Okay.

20 A. -- the candidate from Penn. and Dr. Barile.

21 Q. Do you remember when you made that offer to Dr. Barile?

22 A. The offer to Dr. Barile?

23 Q. Yes.

24 A. Was August 2nd, 2018.

25 Q. Were there discussions before that in terms when she might

1 come on board?

2 A. I don't remember exactly. There's always a discussion
3 that I have with people. Once I make an offer, we then
4 negotiate when their start date is going to be, but it takes at
5 least 6 months to onboard somebody.

6 Q. Did you have an expectation that she might be able to
7 start sooner?

8 A. Very unlikely, because as I said, it takes six months to
9 onboard somebody. They need to go through all the paperwork,
10 they need to be credentialed with UMass, and then they need to
11 be credentialed with the insurers, and that process takes
12 usually between four and six months.

13 Q. Did she have interviews with you prior to making an offer?

14 A. Yes.

15 Q. And do you recall when those interviews were?

16 A. No.

17 Q. Do you -- can you recall if they were many months before?

18 A. I don't know.

19 Q. When she had interviews was it just with you or with
20 others?

21 A. No, everybody who interviews, her position interviews with
22 several people.

23 Q. Did you have to budget for her coming on board in the
24 sense that it was an extra salary?

25 A. I don't remember the finances and the exact budgeting back

1 in, you know, 2018.

2 Q. Was there negotiation between the university and her in
3 terms of what the contract would be prior to this being put in
4 writing?

5 A. Usually once I verbally make somebody an offer, I then
6 follow it very quickly with a written offer, so I don't know
7 exactly in this case, but almost always it's a few days between
8 somebody verbally says, yes, please send me an offer, and I get
9 them an offer letter.

10 Q. But there would be an interview process before that; is
11 that right?

12 A. Yes, the process would be somebody would indicate they're
13 interested in UMass. We would invite them for an interview.
14 They would interview with a group of faculty. Usually they
15 also meet with some of our residents; and then after that
16 somebody can then say, gee, I am interested or I'm not
17 interested. If they're interested, we would then talk about
18 the details of the offer, and then I would rapidly follow that
19 with an offer letter.

20 Q. When was your first contact with Dr. Barile, if you can
21 remember?

22 A. That I don't remember.

23 Q. You don't know? You can't remember?

24 A. I cannot remember.

25 Q. Is there correspondence that would indicate that you had

1 communication with her?

2 A. I don't know.

3 Q. What we're looking at here is that would be the final
4 incarnation, as it were, of the culmination of meeting with
5 her, interviews with her, negotiations with her, and then this
6 letter; would that be correct?

7 A. That is correct.

8 MR. KOLMAN: Okay. Thank you. Nothing further.

9 MR. WAKEFIELD: Nothing further, your Honor.

10 THE COURT: Thank you, Dr. Rosen.

11 THE WITNESS: Thank you.

12 THE COURT: You may step down.

13 The plaintiff.

14 MR. KOLMAN: The plaintiff calls Dr. Charu Desai to
15 the stand.

16 THE CLERK: Please stand. Please raise your right
17 hand.

18 Do you solemnly swear the testimony you are about to
19 give the Court is the truth, the whole truth, and nothing but
20 the truth, so help you God?

21 THE WITNESS: Yes.

22 THE CLERK: Please be seated. Please state your name
23 and spell your last name for the record.

24 THE WITNESS: Last name Desai, D-E-S-A-I. The first
25 name is Charu, C-H-A-R-U.

1 THE COURT: Doctor, I'm going to ask you to move that
2 microphone a little closer. I'm sitting right next to you, and
3 I can barely hear you. So be sure you speak right into it.

4 THE WITNESS: Okay. Tell me when. I don't want it to
5 be soft. Does that sound correct?

6 THE COURT: I'll tell you if it's too loud. I've
7 never told anybody that so.

8 THE WITNESS: Okay.

9 THE COURT: Go ahead.

10 MR. KOLMAN: Thank you, your Honor.

11 DIRECT EXAMINATION

12 BY MR. KOLMAN:

13 Q. Dr. Desai, good morning.

14 I want to clear up, if I could, an issue raised by
15 Mr. Wakefield about Dr. Ferrucci.

16 Do you recall the testimony of Dr. Rosen just some
17 10 minutes ago about Dr. Ferrucci and a meeting with you? Do
18 you recall that?

19 A. Yes.

20 MR. COMENZO: Mr. Clerk, if I could have control of
21 the exhibits.

22 Thank you.

23 MR. KOLMAN: We're going to put that exhibit up again
24 so you can see it.

25 BY MR. KOLMAN:

1 Q. Do you remember this document?

2 MR. KILROY: Exhibit number?

3 A. Yes.

4 MR. COMENZO: 107.

5 MR. KOLMAN: What did you say?

6 MR. COMENZO: 107.

7 MR. KOLMAN: 107.

8 BY MR. KOLMAN:

9 Q. Dr. Desai --

10 A. Yes.

11 Q. -- did you, in fact, have a meeting with Dr. Ferrucci?

12 A. I did.

13 Q. And where did that meeting take place?

14 A. In my office.

15 Q. And did Dr. Ferrucci tell you --

16 THE COURT: Hold up a minute, Mr. Kolman.

17 JUROR: I only see half of her face.

18 THE COURT: Okay. Marty, can you move that down just
19 a bit.

20 Thank you.

21 Can you flatten it? Yeah.

22 THE WITNESS: Is this enough? Good morning,
23 everybody. Thank you.

24 THE COURT: Hold on a second. Everybody good? Thank
25 you for bringing that up.

1 MR. KILROY: Objection to the question, your Honor.

2 THE COURT: The question was I can't see her.

3 MR. KOLMAN: The question was, your Honor, did
4 Dr. Ferrucci come -- did you have a meeting with Dr. Ferrucci?

5 MR. KILROY: Your Honor, the question was did Dr. --
6 did you -- did Dr. Ferrucci tell you, and I was getting ready
7 to --

8 THE COURT: Well, if the question was did you have a
9 meeting with Dr. Ferrucci, I'll let you have it. If it was
10 something Dr. Ferrucci said, then I won't let you have it.

11 MR. KOLMAN: Okay. Thank you, your Honor.

12 THE COURT: Thank you.

13 BY MR. KOLMAN:

14 Q. The exhibit that's in front of you, it -- you've read it,
15 correct?

16 A. Yes.

17 Q. And it talks about what Dr. Ferrucci apparently said to
18 you?

19 A. Yes.

20 Q. Do you have any recollection of what Dr. Ferrucci said to
21 you?

22 THE COURT: Just yes or no, please.

23 A. Yes.

24 Q. Do you have any recollection regarding him saying anything
25 about going off call?

1 A. Yes.

2 Q. Do you have any recollection of him talking about --

3 MR. KILROY: Objection, your Honor.

4 THE COURT: Sustained.

5 MR. KOLMAN: Your Honor, if I could be heard briefly.

6 (Sidebar as follows:)

7 THE COURT: Please whisper.

8 MR. KOLMAN: Yeah, your Honor, this document is
9 already in evidence, and Dr. Rosen has already testified about
10 whether the facts of this -- this document actually occurred,
11 and he denies it.

12 Now, in terms of the fact that this document is in
13 evidence, and the fact that Dr. Rosen has already spoken about
14 what he himself told Dr. Ferrucci to do, I believe that the
15 door is open, and it's only appropriate that she be permitted
16 to talk about or at least testify about what Dr. Ferrucci
17 actually did say, because it's directly relevant. It connects
18 up with what already is in evidence.

19 THE COURT: So, let me ask you this: Against whom is
20 this being offered?

21 MR. KOLMAN: It's not being offered against anyone,
22 your Honor. It's being offered for the integrity of Dr. Desai
23 and the fact that -- this is the way it's being offered, your
24 Honor. Dr. Ferrucci was the agent of Dr. Rosen, who was
25 directly given the authority by Dr. Rosen to talk to Dr. Desai

1 about the issues in this specific letter and, therefore, it is
2 the statement of an authorized agent and --

3 THE COURT: All right. Hold up.

4 What do you say that to that? It -- what I think your
5 brother is saying and what I'm concerned with is whether or not
6 this is a nonhearsay 801(2).

7 MR. KILROY: Your Honor -- your Honor, we agree that
8 there could be an exception, but solely as to being asked about
9 going per diem, talking about Ferrucci's experience going per
10 diem. During the direct exam of Dr. Rosen, he made clear that
11 that's all that he had talked to Dr. Ferrucci about. So this
12 is classic hearsay out of --

13 THE COURT: But it -- it -- it is under 801(d)(2). It
14 might be construed as an admission of the defendant UMass, not
15 Rosen.

16 MR. KILROY: Your Honor, that would only be if there
17 was any testimony that linked Dr. Rosen to -- to the specifics
18 in this email, and he has made clear there -- there is none.
19 So this is classic hearsay.

20 THE COURT: Okay. I'm going to overrule the
21 objection. You may have this, but keep moving.

22 (End of sidebar.)

23 BY MR. KOLMAN:

24 Q. Dr. Desai, we're going to deal with this fairly swiftly.

25 You had mentioned that Dr. Ferrucci came to your office?

1 A. Yes.

2 Q. And what was the -- did he say why he was there?

3 A. He -- after we -- he went in his office and we talk about
4 it.

5 Q. Okay. Can you speak clearly, please, and keep your voice
6 up.

7 A. After we went in the office, he -- he told me that the
8 conversation that --

9 Q. He -- did he talk about --

10 THE COURT: Don't lead.

11 Q. Did he talk about --

12 THE COURT: Don't lead.

13 Q. Okay. What did he say to you? Why don't we just deal
14 with that. Just tell us what he said.

15 A. He said that Dr. Rosen wanted to recommended me for years
16 of service, and he will do the -- the contract for 12 months
17 and/or per diem, and if he go after call then he knows that
18 there will be salary reduction and said he has the obligation
19 to recruit the younger people to -- for the service needs.

20 Q. And what -- did you say anything to that?

21 A. No, I did not at that point.

22 Q. Did you give him any decision?

23 A. No, I did not.

24 MR. KOLMAN: I don't have anything else on this.

25 Q. Dr. Desai, what made you become a doctor?

1 A. Since I was young, I wanted to become a doctor, because I
2 had a few family member. Two of my uncles were doctor. So
3 that -- that was my dream.

4 Q. Can you move the microphone a touch away. That's it. It
5 will be able to be clearer.

6 Can you repeat your answer, please.

7 THE COURT: Hold up just a minute, please.

8 MR. KOLMAN: Sorry.

9 (The Court conferred with the clerk.)

10 THE COURT: Go ahead.

11 BY MR. KOLMAN:

12 Q. Thank you. Could you repeat your answer, please, and
13 clearly. It's just a little fuzzy.

14 A. Since I was younger --

15 Q. Thank you. That's much better.

16 A. My -- my dream was to become a doctor. I had few family,
17 two of my uncles were doctors.

18 Q. You have two relatives who were doctors?

19 A. Yes. Yes.

20 Q. And how did that make you want to become a doctor?

21 A. When I was looking at them, what they do, it just
22 interested me.

23 Q. And how young were you when you decided you probably --

24 A. Probably seven.

25 Q. How young were you when you decided you wanted to be a

1 doctor?

2 A. Around 12, 12 years.

3 Q. And how difficult -- and were you in India at the time?

4 A. Yes.

5 Q. And how difficult was it to -- to actually become a
6 doctor?

7 A. It is. It is very difficult.

8 Q. And what did you have to do in order to become a doctor?

9 A. So first, I had to go high school 12 years. Then had to
10 go in the college, science college, because you need the
11 biology, those type of subjects.

12 Q. Is science college competitive?

13 A. Yes.

14 Q. And how old were you when you went to science college?

15 A. Sixteen.

16 Q. And how long was it for?

17 A. Two years.

18 Q. And then after science college?

19 A. So if you are in the second year, if you get a grade above
20 75th percentile, then you apply and see if you get in.

21 Q. And you applied?

22 A. Yeah, and I was fortunate to get in.

23 Q. How long did it take you to become a doctor?

24 A. See, in India, we have one and a half year. That is first
25 year medical school. Then another one and a half. That is

1 second. Then the third one and a half, which is third medical
2 school. So total of four and a half as far as to study goes.

3 And then you do one year of rotating internship before you
4 get the certificate.

5 Q. And that entitled you to practice medicine in India?

6 A. Yes.

7 Q. And then did you at that point make a decision as to what
8 your specialty might be, if indeed you had a specialty?

9 A. I was interested even then in radiology, because in the
10 rotation you do come across.

11 Q. And what was -- what was it about radiology that made you
12 interested in it?

13 A. It felt like it was a puzzle, and I like to solve the
14 puzzle. So if you saw the image, what it is and why it is.

15 Q. And how did you -- how did you end up here in the United
16 States?

17 A. I -- I wanted to further advance my career in medicine so
18 I came here.

19 Q. And in what way did you wish to further your education?

20 A. To -- to come as a doctor and then do the residency in the
21 field I wanted to do.

22 Q. And do you recall the year that you came to the United
23 States?

24 A. March '74.

25 Q. March '74?

1 A. Yes.

2 Q. And did you have to take any examinations in order to be
3 considered on the same level as an American physician?

4 A. I do. I do. I have to take ECFMG, and that is another
5 exam, flex exam. It is for three days long to pass that before
6 you can go do anything else.

7 Q. And those examinations you took?

8 A. Here, yeah.

9 Q. And those were examinations you passed?

10 A. Yes.

11 Q. And did you then make application to a medical school?

12 A. No, for -- for residency, because at that point I can
13 apply for residency.

14 Q. At that point you could apply for residency?

15 A. Yes.

16 Q. And did you apply for residency?

17 A. Yeah, but I wanted to stay in the area, so I applied for
18 residency. I got in pathology at Mt. Auburn Hospital.

19 Q. Oh, I'm sorry. What hospital was that?

20 A. Mt. Auburn Hospital in Cambridge, Boston.

21 Q. Okay.

22 A. So I did one year of pathology residency.

23 Q. And how did your career progress from there?

24 A. So after that in between I did physician job like in the
25 emergency room and all that, because I needed -- I want -- I

1 wanted to do the radiology residency.

2 So then from a friend, I found out that UMass is going
3 to have radiology residency. So I applied for that.

4 Q. You found out that UMass was going to have?

5 A. Radiology residencies.

6 Q. And did you apply for that?

7 A. I did. I did.

8 Q. And were you accepted?

9 A. Yes.

10 Q. And was there anyone else with you also?

11 A. So at first-year level, we were hired, two resident, but
12 then they let go the second person. So I was the first and the
13 only one when I graduated from UMass.

14 Q. And how long was that residency at the University of
15 Massachusetts?

16 A. Three years.

17 Q. And what specifically was the residency in in terms of the
18 subject matter?

19 A. Diagnostic radiology. Diagnostic radiology. It means you
20 do everything.

21 Q. Diagnostic radiology?

22 A. Yes.

23 Q. And can you give us the year that you were a resident of
24 the University of Massachusetts?

25 A. '78 to '81. 1978 to 1981.

1 Q. And did that expose you to certain modalities in
2 radiology?

3 A. It did.

4 Q. And which modalities did it expose you to?

5 A. So I got interested in the CT scan.

6 Q. CT scans?

7 A. And ultrasound.

8 Q. We have heard testimony about the state of the art of
9 CT scans in the day, as it were.

10 What was the -- what was CT scanning like when you were a
11 resident?

12 A. The main difference was thickness of the slice.

13 Q. Thickness of the slice?

14 A. Slice, yeah, and the clarity, a little bit not that good,
15 because the machines at that time were not -- not great.

16 Q. The thickness of the slide. And has the slide become --

17 A. A lot --

18 Q. -- less thick over time?

19 A. Lot thinner, yes.

20 Q. We heard from Dr. Rosen that it had become thinner; is
21 that true?

22 A. Yes, correct.

23 Q. And what difference does that make if it's thick or thin
24 or ultrathin? Does that make any difference?

25 A. In reality, no, but it is easy to see. It is easy to see.

1 In reality the body structures are still the same. Whether you
2 do thin slice or thick slice, the body, what is in inside is
3 still the same, but it is easier to see.

4 Q. It is easier to see. Is it your testimony it's easier to
5 see if it's thinner?

6 A. More detail, yeah.

7 Q. More detail?

8 A. Yeah.

9 Q. If we're on that anyway, is there some kind of course that
10 you need to take that you haven't taken, which would enable you
11 to -- which would have enabled you to do your job better and
12 more professionally if you -- if you had taken it while you
13 were employed?

14 MR. KILROY: Objection.

15 THE COURT: Overruled.

16 THE WITNESS: In that time or?

17 BY MR. KOLMAN:

18 Q. Yes, while you were employed at -- at UMass, there has
19 been testimony that you were out of date?

20 A. I'm not.

21 Q. Were you -- did you feel in some way that you were not
22 able to do your job well, because there was certain technology
23 or course that you had not mastered or taken?

24 A. No, I did -- I did -- I went to the conference, and, like
25 I said, the main difference is the thickness of the slice.

1 Otherwise, yeah, I went to the conference every year.

2 Q. We'll deal with that in a minute.

3 A. Okay.

4 Q. I'm talking about, were you -- did you feel able to do
5 your job professionally and to the best of your competence
6 right up until the time that you were terminated?

7 A. Definitely.

8 Q. Did you feel that there was anything technologically or
9 medically that you felt you needed to master in order to do
10 your -- your job better than you were already doing it?

11 A. No.

12 Q. Over the period of time that CT scans have evolved, was it
13 your testimony that the resolution of the image is actually
14 clearer?

15 A. Yes.

16 Q. Does that assist in your ability to diagnose whatever it
17 is you're looking at in the CT scan?

18 A. Yes.

19 Q. Is there any skill involved in technically looking at a
20 CT scan when the slides are very thin as to when they are
21 thicker?

22 A. Nothing different, no.

23 Q. How many CT scans, approximately, did you look at in a day
24 while you were at UMass?

25 A. Around 20.

1 Q. Twenty?

2 A. Uh-huh. And I also did a lot of chest x-rays, too.

3 Q. With respect to chest x-ray, we have -- I haven't asked
4 you about that.

5 Had -- has x-rays remained more or less the same since
6 the time of your residency, as opposed to CT scans, which have
7 become more -- resolution is higher.

8 A. Chest x-rays kind of same, but it is also a better
9 quality, because now it is digital, so it's a little bit better
10 than before.

11 Q. Is there often the case when you have to look at both the
12 chest x-ray and the CT scans together?

13 A. Yes, to compare what was -- so if I'm doing a CT scan and
14 they would give me the history that there is something wrong,
15 so that I have to look at the chest x-ray, what was the
16 original reason why it was done. Because first you have to
17 pick up the finding in the chest x-ray even to do the CT.

18 Q. When you were employed at UMass and you said you looked at
19 some 20 CT scans a day, it was -- did I understand your
20 testimony to be you also looked at x-rays at the same time?

21 A. Yeah. Over -- over the daytime --

22 Q. And --

23 A. -- yes.

24 Q. -- did some of those x-rays relate to the CT scans that
25 you were also looking at?

1 A. No, because I have a separate list.

2 Q. Is there any difference in the difficulty of looking at
3 x-rays and an x-ray and a CT scan? I know I'm talking
4 generally, and I know CT scans can complicate it.

5 But generally speaking, can you -- if you can answer that
6 question?

7 A. Yeah, I can. So chest x-ray it is like going from front
8 to back of your body. So you have muscle, you have ribs, you
9 have lungs, you have heart. So all the things on top of each
10 other.

11 So to pick up anything with -- with -- whether it is -- in
12 each structure has a different density. So you have to figure
13 out is that related to normal structure or it is abnormal.

14 As in CT, it is a loaf of bread, and you're cutting
15 the slices. It is, like, laid out for you. So that's the main
16 difference.

17 So actually chest x-ray, if you want to find a certain
18 finding, like finding a nodule, it is difficult until you are
19 used to it and you look at so many of them.

20 Q. Does -- does experience help in terms of looking at
21 x-rays?

22 A. In general for all the modality, the more the experience
23 it is.

24 Q. And how many years experience did you have in March of
25 2018?

1 A. Twenty-six years at UMass. I was also in a private
2 practice for 11 years, so total of 38 as an attending. It
3 doesn't count my fellowship or residency.

4 Q. I want to bring you to the actual date of your
5 termination.

6 Do you remember that date?

7 A. How can I not remember that date.

8 Q. Before March 14th of 2018, did you have any idea that your
9 work was being reviewed in any way?

10 A. Not at all. Not at all.

11 Q. Did you have any idea that apparently there were
12 complaints made by physicians to Dr. Dill and to Dr. Robinson
13 about your work?

14 Did you have any idea about that?

15 A. No idea whatsoever.

16 Q. And did anyone ever tell you at any time who these
17 physicians were?

18 A. No.

19 Q. While you were at UMass, if a physician wanted to ask you
20 a question about a specific x-ray or CT scan, would
21 they -- would they contact you and ask you?

22 A. Yeah, if they are in the hospital they always come in
23 person and say, hey, can you please look at this.

24 Q. And was that a regular routine that if a doctor had a
25 question or an issue that they would contact you?

1 A. Yes.

2 Q. And would they contact you personally?

3 A. Yes.

4 Q. And how would they do that?

5 A. They come in the reading room.

6 Q. They would call you?

7 A. No, they come in the reading room.

8 Q. Okay.

9 A. And say this is the patient, will you please look at it.

10 Q. They come into the reading room?

11 A. Yeah, where I -- where I sit. I do the -- near the
12 machine.

13 Q. And how often, if you can tell us, on a -- on a basis did
14 physicians come into the reading room to ask you questions?

15 A. It varies, but it can be eight to ten times. If I'm the
16 only one in the reading room, naturally they're just going to
17 come to you, and they know me from over the years. So they do
18 it. They do come. They come with the residents sometime
19 because they want to teach them.

20 Q. Can you give us -- oh, and to teach them.

21 Can you give us an example of the kind of questions
22 you might get or, in fact, did get?

23 A. Yes, sir. There is CT scan, and then if there is a
24 finding there, then they will say what do you think it is. So
25 just to get my opinion.

1 Q. Did you -- were you requested to give second opinions for
2 the diagnoses of other radiologists?

3 A. Yes.

4 Q. And was that usually an opinion that the referring
5 physician was coming to you with?

6 A. Yes.

7 Q. And did you get emails at times requesting your input on
8 certain x-rays or CT scans?

9 A. Very few. Very few. Usually they come at least in my
10 experience.

11 Q. Very few?

12 A. Very few. Very few.

13 Q. But when you did get them, how did you respond to the
14 email?

15 A. Usually the email is to what do I do about this, the
16 finding I have. I call them so that they know they have an
17 answer.

18 Q. You would call them on the phone?

19 A. Yeah, yeah, usually I call them.

20 Q. And why would you call them as opposed to just emailing
21 them back?

22 A. It's just I think it is more easier for the physician, and
23 because I, like I said, know so many of them. They don't mind
24 my phone call. On the contrary, they appreciate that. And
25 they take it seriously too.

1 Q. And in a phone call, are you able to have a discussion
2 back and forth about any issues that --

3 A. Yeah, what they're asking for mainly. Mainly.

4 Q. At any time in your 26 years has any chief of -- well, let
5 me ask you this. How many chiefs of radiology have you
6 actually worked for in the 26 years you were at UMass?

7 A. At least six doctors: Smith, Dr. Felice, Dr. Leppo,
8 Dr. Kandarpa. So, one, two, three, four; Dr. Ferrucci, five;
9 and him, six.

10 Q. And with respect to the five before Dr. Rosen, at any time
11 did -- did the chief ever indicate there was any problem
12 whatsoever in any form with respect to your reading of x-rays
13 or CT scans?

14 A. Never. Not only that, they don't -- everybody wrote a
15 reference letter when you get promoted from assistant to
16 associate. You have to have a letter from certain number of
17 people. So they did. All of them did that.

18 Q. How long have you been teaching residents by the way?

19 A. Since January 6, 1992. So it used to be 40 resident per
20 year. Now it is recently just five per year. Not only that
21 the medical student, because when they are in medical school
22 they have to spend a month or so in the regular rotation,
23 rotation.

24 Q. Are these residents residents who are doing just a
25 rotation in radiology as part of their general medical

1 education?

2 A. Yeah, resident has to go through all the modalities.

3 Q. And -- and how long is the rotation that a medical student
4 has to -- has to go through for -- for radiology?

5 A. Not too long. Usually they spend a week or two, so like
6 two days in chairs, two days in emergency, different modality,
7 just to get a sense of it, what it is kind of.

8 Q. What is your style for teaching these residents? Is it
9 lecturing or is it -- how -- how do you actually teach the
10 residents how to read x-rays or CT scans?

11 A. I -- I did not give regular lectures, but when I check
12 them, like, see, they give you the cases themselves. And then we
13 sit together.

14 Q. You sit together?

15 A. In the -- on the machine.

16 Q. That's you and?

17 A. And my resident.

18 Q. And how many residents are there when you sit together?

19 A. See, there are usually one or two rotating. So one -- one
20 person at a time. One person at a time.

21 Q. And as you sit together, what do you require the resident
22 to do?

23 A. So first I bring up the image on my machine, and then I
24 ask them what did you see.

25 Q. Is that a CT image or an x-ray image?

1 A. Chest -- chest or -- chest or CT, either one.

2 Q. Okay.

3 A. Then I look at it myself, and then I say, Did you see
4 this? Did you see that? So it is -- I -- I love to teach, and
5 over the years more than a hundred residents has gone through
6 me. And many time I see them in the conference. Once in a
7 while I --

8 MR. KILROY: Objection, your Honor.

9 THE COURT: Sustained.

10 THE WITNESS: -- in the restaurant --

11 THE COURT: Stop. Stop.

12 THE WITNESS: Okay.

13 THE COURT: Let's have a question, please.

14 BY MR. KOLMAN:

15 Q. In 2017 --

16 A. Yes.

17 Q. -- you were voted teacher of the year?

18 A. Yes.

19 Q. Who -- who -- who exactly voted for that?

20 A. All the resident combined, around 20 of them.

21 Q. All the residents at medical school?

22 A. Yeah --

23 Q. -- for that year?

24 A. -- in radiology for that year. Not -- so like I said, it
25 is 40 of them now.

1 Q. Okay.

2 A. So around 20.

3 Q. Were you ever told --

4 A. They worked among themselves.

5 Q. I'm sorry.

6 A. Sorry.

7 Q. After you could no longer read CT scans, did that affect
8 your ability to teach residents as you had done in the past?

9 A. Definitely. I had to --

10 Q. Were you able to continue to teach them in the way that
11 you had before?

12 A. No, because now they are not sitting next me to me
13 rightly. I was stopped, and they were very upset too, because
14 most of them know me.

15 MR. KILROY: Objection.

16 BY MR. KOLMAN:

17 Q. Just wait for my question.

18 A. Okay.

19 Q. Okay. What year was it that Dr. Rosen came on board as
20 chief of radiology; do you recall?

21 A. 2012.

22 Q. And when he came on board, did he meet with you?

23 A. He met before that, before he actually started.

24 Q. And in 2012 to 2013, did he indicate any problems with you
25 at all?

1 A. No.

2 Q. Did he indicate that there had been any complaints about
3 you from any doctors?

4 A. No.

5 Q. And during the year of 2013 to 2014, the same question?

6 A. No.

7 Q. And 2014 to '15 --

8 A. No.

9 Q. -- the same question?

10 And 2015 to 2016?

11 A. No.

12 Q. The same question. And 2016 to 2017?

13 A. No.

14 Q. Did you meet with Dr. Rosen for a regular evaluation once
15 a year?

16 A. Every year, yeah. All the faculty, all the faculty did
17 meet him -- meet with him.

18 Q. The document -- the documents that reflect your
19 evaluations that were given to Dr. Rosen by me, are those
20 documents the documents that reflect your evaluation for that
21 year?

22 A. Yes.

23 Q. Are there any other documents for any year that could also
24 be looked at to determine how you were doing that year?

25 MR. KILROY: Objection.

1 THE WITNESS: I have never seen it.

2 THE COURT: Sustained. That's sustained.

3 THE WITNESS: I never seen it.

4 THE COURT: Wait. Wait for a question, please.

5 BY MR. KOLMAN:

6 Q. Did you ever receive any other documents, apart from the
7 evaluation documents?

8 A. Never.

9 Q. Did you have any other discussions with Dr. Rosen in
10 respect to your performance, except the once a year discussion
11 with --

12 A. No.

13 Q. Sorry. In 2017, did you have a meeting with Dr. Rosen as
14 you had done in prior years?

15 A. Yes.

16 Q. And do you recall when that meeting was?

17 A. The annual meeting, yeah, in September.

18 Q. The evaluation meeting?

19 A. September, around in Sep- -- early September, probably.

20 Q. Early September?

21 A. I don't know the exact date. Yeah.

22 Q. I'm sorry. Did you say September?

23 A. Yes.

24 Q. September 2017?

25 A. '17, yeah.

1 Q. And how long was your meeting with Dr. Rosen?

2 A. Usually not too long, maybe five, 10 minutes.

3 Q. And do you recall what Dr. Rosen said to you --

4 A. Yeah.

5 Q. -- during that meeting?

6 A. Yeah, he said -- he said about the --

7 Q. Wait. Can you tell us what he said?

8 A. He talk about recently the teacher of the year award.

9 Q. What did he say?

10 A. He just said -- he just acknowledge that I did the teacher
11 of the year.

12 Q. I can't hear you. You must speak up and clearly too.

13 A. He -- he -- he talk about my receiving teacher of the year
14 award.

15 Q. Did he -- and what did he say about that?

16 A. He just acknowledge.

17 Q. Okay. And was there any -- any other discussion about
18 anything else?

19 A. Not that I recall.

20 Q. Okay. After your meeting with Dr. Rosen, was there any
21 other further discussion with Dr. Rosen or any other
22 employer -- any other employee or officer of UMass regarding
23 your performance?

24 A. No.

25 Q. At any time were you -- was it suggested that you needed

1 to increase your skills by attending courses in order to become
2 more technologically facile?

3 A. No.

4 Q. At any time was it suggested to you that you should --
5 that -- that your not using emails was compromising your
6 ability to do your job properly?

7 A. No.

8 Q. After you had your meeting with Dr. Rosen, did you just go
9 ahead and continue to do your job as you always had done?

10 A. Yes.

11 Q. And from September to December, was there any difference
12 between those three months and the way that you had conducted
13 yourself before?

14 A. No.

15 Q. With regard to vascular CTs, can you tell us what a
16 vascular CT is?

17 A. So to check the vessels in the body, you give the contrast
18 and see if there is any abnormality.

19 Q. Can you speak up, please.

20 A. To -- to check, like, all the vascular structure, the
21 arteries and all those structures, veins, arteries, you have to
22 do the contrast and see if there's an abnormality.

23 Q. And are vascular CTs sometimes more difficult than other
24 CTs --

25 A. Yes.

1 Q. -- of the thoracic region?

2 A. Yes. Some of them are complicated, yes.

3 Q. And can you tell us in words that we can understand why
4 that is?

5 A. Because it can have different appearance, the different
6 abnormality can have different appearance. And to make the
7 diagnosis, you have to be correct.

8 Q. Okay. Are there sometimes different opinions that
9 radiologists render looking at the same CT?

10 A. A lot of times.

11 Q. And can you tell us why that is?

12 A. That's the radiology. It has always been --

13 Q. Speak up.

14 A. In radiology, different people looking at the same thing
15 can have different opinion. That's very common. Very common.

16 Q. And is it -- is it the case that two radiologists can look
17 at the same image --

18 MR. KILROY: Objection.

19 Q. -- and one -- and one can see -- and they can see the same
20 thing, but one determines that it's more dangerous than
21 another?

22 A. It can.

23 Q. How do radiologists assure themselves that they
24 are -- they properly or at least as best they can diagnose the
25 image on the screen if, as you say, radiologists can sometimes

1 or often disagree with each other?

2 A. I don't know if I understood the question correct.

3 Q. I'm sorry.

4 A. I don't know if I'm understanding the question right.

5 Q. Yes. Given what you said about radiologists disagreeing,
6 is there any way that radiologists ground themselves or ask for
7 other opinions in order to narrow any disagreement between
8 them?

9 A. Yes, sometime they do, yeah.

10 Q. And how is that done?

11 A. If I'm reading something, and if I have a question, then I
12 go ask my colleague, do you agree with this, because it's --
13 end of the day, the patient matters. It's not my ego. It is
14 the patient which matters. So if any time I feel that I don't
15 know what this is --

16 Q. Uh-huh.

17 A. -- then I go to my colleague. And the same thing they do,
18 too.

19 Q. So were there times when you actually asked radiologists
20 for their opinions --

21 A. Yes.

22 Q. -- and input on -- on CTs and x-rays that you --

23 A. Both.

24 Q. -- yourself could see?

25 A. Both.

1 Q. And did the same happen to you that you were asked for
2 your opinion on the same, CTs and x-rays?

3 A. Yes.

4 Q. And did that happen on a regular basis?

5 A. Quite -- it depends. It depends.

6 Q. Now, at any time during the 26 years did you get what's
7 called a peer review of -- of your cases?

8 Well, let me go back. Did you -- do you understand
9 what a peer review is in radiology?

10 A. Yeah, there is a system in place, yeah.

11 Q. Can you tell us in broad terms that we can understand what
12 a peer review actually is?

13 A. So you are given somebody -- other radiologists's images
14 to see whether what they say is correct or not.

15 Q. And --

16 A. And then you put it in the system.

17 Q. And how -- and were you -- did that ever happen to you
18 that you were subject to a peer review?

19 A. Only time I saw was one of the -- one of the document, but
20 that I saw in -- but otherwise, no, no, I have not -- anybody
21 has not brought to me as a colleague peer review that I made a
22 mistake kind of.

23 Q. When you sat down with Dr. Rosen, did Dr. Rosen talk about
24 what's been called fours and threes?

25 A. Yeah, at the annual meeting he will give you the paper.

1 Q. And what are fours and what are these threes? I know we
2 perhaps heard about it from Dr. Rosen, but I would just like to
3 just hear it again from you.

4 A. So, categories one, two, three, and four.

5 Q. Okay.

6 A. So one is person is agreeing what they read.

7 Q. I'm sorry. Four is what?

8 A. Four is that should have picked up the finding, and it
9 would have patient impact kind of.

10 Q. Okay. And how were these fours and threes generated; do
11 you know?

12 A. I think you can do -- see, automatically when you are peer
13 reviewing, whenever these five cases comes, then you do that
14 way. But somebody can manually put it, too.

15 Q. And these three and these fours, was it your understanding
16 that Dr. Rosen was giving you that paper for the entire year?

17 A. Yes.

18 Q. And did Dr. Rosen ever make any comment on the number of
19 threes or the number of fours?

20 A. No.

21 Q. When you looked at the threes and the fours yourself, did
22 you have any opinion as to how you had done for that year in
23 terms of your diagnostic prowess?

24 A. I did not agree. And some of -- one of them was the
25 person who criticized me, not realizing criticizing on the

1 study.

2 Q. Okay. Now, moving ahead to March 14th, 2018.

3 How did you -- how were you notified that -- that
4 there was going to be a meeting?

5 A. Like week and a half before that.

6 Q. A week and a half before?

7 A. Before the March 14, 2018, there was an email that you
8 have a meeting with Dr. Rosen at noontime. And I said, What is
9 it about?

10 Q. You asked what is it about?

11 A. Yeah, to the secretary. I didn't talk to anybody else.

12 Q. Did you get an answer?

13 A. And I didn't get any answer.

14 Q. Okay.

15 A. So I had no idea.

16 Q. Did you work the full morning before going in to see
17 Dr. Rosen?

18 A. Yeah -- can I go a little bit longer on that? So it was
19 like a regular day. I -- I do my own work in the morning.
20 Then around 10:30, 11:00, the resident sits with me, because I
21 have to check what he did -- sorry -- for that part of the
22 morning. So he finishes the -- we finished the morning work.

23 Q. So when you went in to see Dr. Rosen, who else was there?

24 A. Dr. Charles Cavagnaro and Dr. Rosen.

25 Q. And who is Dr. Signiori (phonetic)?

1 A. Charles Cavagnaro is one of the higher people.

2 Q. Did you ever know him or meet with him?

3 A. Never.

4 Q. And can you tell us just what -- tell us in your own words
5 what happened?

6 A. So I was --

7 Q. Slowly.

8 A. I was given a letter, and he said this is your
9 termination.

10 And your service will no longer be required March 17,
11 2019, so, like --

12 Q. Can you speak up, please, and more --

13 A. The last -- the last day of my employment will be
14 March 17, 2019.

15 Now, looking at that paper, it was almost impossible to
16 keep myself because I had no idea that I was going to go
17 through that. So my next question was why.

18 Q. Did Dr. Rosen give you the letter and then say you were
19 terminated, or did he say you were terminated and give you the
20 letter or was the letter open? Can you give us a little about
21 that.

22 A. The letter was open.

23 Q. It was open?

24 A. It was -- I think it was opened.

25 Q. And then he said, You're terminated?

1 A. Yeah.

2 Q. Did he say you're terminated for no cause or just that
3 you're terminated?

4 A. Yeah, yeah, he did. So because my -- I was in shock. I
5 was not -- it was -- even today it's difficult. So my next
6 immediate question was why.

7 MR. KILROY: Objection.

8 THE COURT: Sustained.

9 BY MR. KOLMAN:

10 Q. Okay.

11 A. And he said no cause.

12 Q. Let me -- let me ask you a series of questions.

13 After you received the letter, you asked a question?

14 A. Yes.

15 Q. Of -- of the two men in the room. And what was your
16 question?

17 A. Why.

18 Q. And what was the answer?

19 A. No cause termination, no cause termination.

20 Q. Okay. No cause. Did you have -- okay. So did you ask
21 another question --

22 A. Yeah, I said --

23 Q. -- on that basis?

24 Wait. What was the question you then asked?

25 A. Well, it's no cause, because I did not know. He said it

1 is in your contract. So my next question was: Give me the
2 contract. I want to see it. And he said, I do not have it
3 right now, but I'll give it to you.

4 Q. You wanted to see the contract?

5 A. Yeah, because I -- I -- to me the time was even --

6 Q. Okay. And so you asked for the contract?

7 A. Yeah.

8 Q. And he didn't have it, but he was going to give it to you?

9 A. Yeah, he did.

10 Q. What was your next question?

11 A. The next thing he told me that as of this afternoon --

12 MR. KILROY: Objection.

13 THE COURT: Sustained.

14 THE WITNESS: As of this afternoon --

15 THE COURT: Wait. Wait. Wait. When I sustain the
16 question, the --

17 THE WITNESS: Sorry.

18 THE COURT: The answer -- that's okay. Ask a question
19 please, Mr. Kolman.

20 BY MR. KOLMAN:

21 Q. After -- after you requested the contract, was there any
22 other discussion?

23 A. There was.

24 Q. And was that discussion from -- from your side?

25 A. No, from his side.

1 Q. From their side?

2 A. Yeah.

3 Q. And what was your understanding of what they were then
4 telling you?

5 A. What he told me as of this afternoon, you're not supposed
6 to read CT scan, because the CT scan of poor quality.

7 Q. And was that the first time that you had ever heard that
8 you had a problem with CT scans?

9 A. First time ever.

10 Q. And did that prompt any further questions from you?

11 A. He -- I think he did say he did independent review. I'm
12 not exactly sure.

13 Q. Okay.

14 A. But he said independent review, he did.

15 Q. Did -- were you given an instruction in respect to
16 reviewing CT scans at that time?

17 A. Instruction was not to do it this afternoon, as of this
18 afternoon.

19 Q. And did you leave the office at that time?

20 A. I left the office as if somebody --

21 Q. And after you left the office, approximately what time was
22 it?

23 A. Noon, so maybe 12:15, 12:30 around that.

24 Q. And what did you do?

25 A. I was -- it was like somebody put a knife through my

1 heart, like I never felt. This shouldn't happen to anybody.

2 Q. What did you do?

3 A. Nothing. I was -- I couldn't even stand. I was
4 just -- completely out kind of. So devastated that when I talk
5 I don't want to talk about it. It hurts too much.

6 Q. I understand. But for these purposes at least we are
7 going to talk about it, okay. Take a tissue.

8 A. Okay.

9 Q. Did it take you a little bit of time to determine what you
10 would do next?

11 A. Yeah, that day it was completely -- I was so, so bad. And
12 he did tell me that I can still read the chest x-ray for the
13 year, because the date was 3/17 to completely finish my
14 employment.

15 Q. Were you able to continue to work that term -- that
16 afternoon?

17 A. I was not.

18 Q. And did you leave? Did you -- did you have to leave the
19 hospital?

20 A. I called my family up to pick me up.

21 Q. And -- and did your family come and pick you up?

22 A. Yeah, they did.

23 Q. And did you confide in your family?

24 A. I did.

25 Q. And your husband?

1 A. My husband, my daughter.

2 Q. Is your husband here today?

3 A. My husband is right there.

4 Q. Did you go to work the next day?

5 A. I did. I did.

6 Q. You went to work the next day?

7 A. Yeah, because that's what I love to do.

8 Q. And the days after that, you went to work?

9 A. The whole year. The whole year.

10 Q. And did you take call that we've heard so much about on a
11 regular basis?

12 A. I did. Even that year I did. Even that year I did.

13 Q. And following that meeting with -- with Dr. Rosen and
14 Dr. Signiori (phonetic), did you then write any subsequent
15 correspondence to them in respect of what they told you?

16 A. I did.

17 Q. And --

18 A. I wrote -- I wrote email to say I would like to see the
19 cases.

20 Q. And I believe we may have seen that. And you were
21 requesting?

22 A. I was requesting if I can see the poor quality CTs, so if
23 that is true, then I can improve, and I also asked can I bring
24 my independent reviewer.

25 Q. You -- you wanted to see, as I understand, the actual

1 CT scans?

2 A. I wanted to.

3 Q. And those CT scans that you had an understanding were the
4 basis for you now not being able to read CT scans?

5 A. Yes.

6 Q. And you had requested to bring an expert.

7 For what purpose did you wish to bring an expert?

8 A. Because his decision was in bringing the expert. I wanted
9 to see what my expert says. Is that really a problem.

10 Q. And you weren't able to bring an expert?

11 A. Yeah, he said no, but you can bring a colleague.

12 Q. And you did bring a colleague?

13 A. I did bring a colleague, Sarwat Hussain.

14 Q. And how long after the original meeting in March of 2018
15 was this next meeting with Dr. Hussain and you and Dr. Rosen?
16 When -- when did that take place?

17 A. April 24.

18 Q. April 24?

19 A. '18, yeah.

20 Q. And when you went to that meeting was anyone there apart
21 from Dr. Rosen?

22 A. Yeah, Dr. Baccei. He's vice chair of quality control.

23 Q. Dr. Baccei?

24 A. Yeah.

25 Q. And when you went to that meeting did Dr. Rosen present

1 you with any information that assisted your understanding as to
2 why your privileges in respect to CT scans had been revoked?

3 A. He did a PowerPoint. He put a PowerPoint slide on the
4 wall, but I could not make out anything after that.

5 Q. One question at a time. He put the PowerPoint on the wall
6 and --

7 A. One slide.

8 Q. And while he was putting the PowerPoint on the wall, did
9 he explain what you were supposed to be looking at?

10 A. Yeah, this -- this side where you made the error that was
11 the idea, but I couldn't see and make out anything after that.

12 Q. And Dr. Hussain was there as well?

13 A. Yes.

14 Q. Was that the whole meeting --

15 A. Yes.

16 Q. -- just the PowerPoint?

17 A. PowerPoint, and I did receive a hard copy of one paper.

18 Q. Did Dr. Rosen tell you that he himself had designed this
19 PowerPoint -- this test, if you will, did he tell you that was
20 his creation?

21 A. No, at that time we didn't discuss. I was not, no.

22 Q. Did -- did he say who had reviewed the 25 CT scans of you?

23 A. No, he did not.

24 MR. KILROY: Objection.

25 THE COURT: Sustained. Don't lead.

1 MR. KOLMAN: Okay.

2 BY MR. KOLMAN:

3 Q. You left, you say, with a lack of understanding.

4 Did Dr. Hussain have more understanding than you?

5 MR. KILROY: Objection, your Honor.

6 THE WITNESS: No.

7 THE COURT: Sustained.

8 BY MR. KOLMAN:

9 Q. When was the next interaction, if you had one,
10 with -- with Dr. Rosen in respect to this matter?

11 A. I did not.

12 Q. There was none?

13 A. No.

14 Q. Was there any further correspondence from you to Dr. Rosen
15 after the PowerPoint relevant to what we have just been talking
16 about?

17 A. Just the email stating that I came and this is what we
18 did.

19 Q. During the time after that, did you have an understanding
20 that because your contract -- because you had worked for over
21 20 years, there was a year available to you to continue to
22 work?

23 A. Yeah.

24 Q. And during that time, you did not review any CT scans?

25 A. I did not.

1 Q. Did you contemplate trying to get other employment during
2 that year?

3 A. I did.

4 Q. And where did you contemplate possibly being reemployed?

5 A. I tried different, Boston area, Connecticut.

6 Q. Did you have any sense that because you could not read
7 CT scans or you had been forbidden from reading them that that
8 would be a disadvantage in -- in --

9 A. Yes.

10 Q. -- getting a job?

11 A. Yes.

12 Q. And why did you think it would be a disadvantage?

13 A. Because usually that's what people want, the both, the
14 more modalities, both the modalities. Just x-ray, it is -- any
15 kind of position they want to you to be able to read CT scans.

16 Q. They want radiologist to have more than one modality; is
17 that what you said?

18 A. No, more. Not one thing. They want people who can do a
19 lot of things.

20 Q. Were you ever asked the question by a representative of a
21 hospital to whom you applied what had happened to you at UMass?

22 A. You do. And they will ask you whether you were
23 terminated.

24 Q. Did you have to say?

25 A. Yes. They will also ask you whether your privilege has

1 been restricted.

2 Q. I'm sorry. I didn't hear that.

3 A. Whether your privilege has been restricted. That's the
4 other question they ask you.

5 Q. And then did they ask any follow-up questions when you
6 said --

7 A. No.

8 Q. -- that you were terminated?

9 A. No, you don't --

10 Q. Did you ever hear from any of those hospitals again?

11 A. You don't hear from them.

12 Q. What was it like for you having to tell these other
13 institutions that you had been terminated?

14 A. Very humiliating to --

15 Q. Speak up.

16 A. Very humiliating and degrading.

17 Q. Humiliating and degrading?

18 A. Yeah. Yeah.

19 Q. When you were employed by UMass, did you regularly go to
20 any medical conventions or further education?

21 A. I did.

22 Q. And -- and what specifically did you go to on a regular
23 basis?

24 A. The CT scan especially --

25 Q. Speak up.

1 A. CT scan. Especially there is a Harvard course on chest
2 imaging every other year.

3 Q. Every year?

4 A. Every other year.

5 Q. Every other --

6 A. And I made sure that I --

7 Q. I'm sorry. Where was that, in Boston?

8 A. Boston. Boston.

9 Q. And what happens at that meeting or -- or educational
10 convention?

11 A. It is specifically designed for the chest modality, so you
12 have almost like whole week of different lecture on different
13 topic.

14 Q. Different lectures?

15 A. Yeah, yeah.

16 Q. And these lectures are given by?

17 A. By Harvard specialists and all that.

18 Q. Are these radiologists?

19 A. Yes. They are thoracic radiologists.

20 Q. And is it your testimony that you regularly attended these
21 conventions?

22 A. I did. I did.

23 Q. And UMass paid for that?

24 A. Yes.

25 Q. And did you -- did you have a sense that you could do your

1 job without needing to -- well, let me ask you this: Were you
2 ever told of a course that you could take which somehow would
3 increase your CT and the analytical skills?

4 A. No.

5 Q. Did you ever receive any flyer in the mail or elsewhere
6 telling you that there was a course that could assist you in
7 your diagnostic skills?

8 A. Yes, and I went to some of them, right, because we -- yes,
9 I did. And see when you get the flyer then you see what is the
10 topic, and I did go to. Apart from Boston, I did go to.

11 Q. Now, you worked with other radiologists?

12 A. I did.

13 Q. And the question has been brought up as to academic time.
14 Now, we heard Dr. Rosen talk about academic time and
15 did -- was -- did you request at some point from Dr. Rosen
16 academic time?

17 A. I did, 12. I only requested 12 per year.

18 Q. I'm sorry.

19 A. I only requested 12 days per year. And according to --

20 Q. Wait. How many days did you request?

21 A. Twelve days.

22 Q. Okay.

23 A. Per year. Because I was teaching so I was entitled for
24 that.

25 Q. And what did you intend to use those academic days for?

1 A. In my case, I wanted to take a -- take a break for the
2 call in and all that. Because it was ten days in a row was
3 very difficult.

4 Q. Did you have any understanding that, according to
5 Dr. Rosen, these academic days could not be used in the way
6 that you wanted to use them?

7 A. Yes, but the thing is who people just came to be on the
8 job for the first time, from the first week --

9 MR. KILROY: Objection.

10 THE COURT: Sustained.

11 THE WITNESS: The first week they were --

12 BY MR. KOLMAN:

13 Q. Stop.

14 A. Okay.

15 Q. When the judge says "sustained," you have to stop
16 speaking.

17 A. Okay.

18 Q. Okay. All right. When you spoke to Dr. Rosen, did
19 Dr. Rosen talk to you about academic time and what it was to be
20 used for?

21 A. He did. He said give me the --

22 Q. Wait. Did Dr. Rosen ask you what you were going to use
23 the academic time for?

24 A. Yes.

25 Q. And what did you tell him?

1 A. He asked me for the proposal, but I did not give it.

2 Q. And did you then pursue the issue of academic time?

3 A. There was nothing to pursue because he said no.

4 Q. Do you know of other doctors who had academic time?

5 A. Almost everybody once a week, almost everybody.

6 Q. Your testimony is that all other radiologists have
7 academic time?

8 A. Yes.

9 Q. As far as you know?

10 A. Once a week.

11 Q. As far as you know, do you know how they used that
12 academic time?

13 MR. KILROY: Objection.

14 THE WITNESS: With themselves.

15 THE COURT: Sustained.

16 BY MR. KOLMAN:

17 Q. Wait. You have to stop, okay?

18 A. The --

19 Q. Just wait. Did Dr. Dill have academic time, if you know?

20 A. Yeah.

21 Q. How much time did she have?

22 MR. KILROY: Objection.

23 THE WITNESS: 72.

24 THE COURT: Well, so hold up. Don't answer. You need
25 to lay a foundation. Sustained. I'll let you go there --

1 MR. KOLMAN: Okay.

2 THE COURT: -- but you need to lay a foundation.

3 MR. KOLMAN: Sure.

4 BY MR. KOLMAN:

5 Q. How did you ever know, first of all, how anyone else,
6 whatever -- what academic time anyone else had?

7 A. Two ways. In discovery phase, I found out about a lot of
8 other people.

9 Q. Say?

10 A. In -- in -- when we had a lawsuit in discovery papers.

11 Q. In the process of discovery of this case?

12 A. Yes, but regularly on the schedule, also you have read,
13 and this person is academic, and this is administrative. So
14 that is how.

15 Q. Is that schedule available for you to see --

16 A. Yes.

17 Q. -- while were you working?

18 A. Yes.

19 Q. And when it said academic time, did you have any knowledge
20 of the amount of academic time, or was it just that a physician
21 was taking academic time?

22 MR. KILROY: Objection, your Honor.

23 THE COURT: Sustained.

24 BY MR. KOLMAN:

25 Q. This schedule that you looked at --

1 A. Yes.

2 Q. -- was it a schedule of -- what kind of schedule was it?

3 MR. KILROY: Objection, your Honor.

4 THE WITNESS: See, this is --

5 THE COURT: Well, wait. When there's an objection,
6 please don't answer.

7 Overruled. You may answer.

8 BY MR. KOLMAN:

9 Q. What kind of schedule was this you were looking at?

10 A. See, I work in chest so I have -- so we have weekly
11 schedule, who is in what area, am I reading CT, am I reading
12 chest x-ray? So in there it says.

13 Q. And when you say "in there," were you able to see other
14 physicians taking academic time?

15 A. If -- if you look at their schedule, yes.

16 Q. But -- okay. So in the course of discovery, did you find
17 out how many days Dr. Dill was taking for academic?

18 THE WITNESS: 72.

19 MR. KILROY: Objection, your Honor.

20 THE COURT: Sustained.

21 BY MR. KOLMAN:

22 Q. Let's talk about Dr. Dill for a minute.

23 THE COURT: Let's do this. Let's talk about Dr. Dill
24 in 20 minutes.

25 MR. KOLMAN: Okay. Thank you.

1 THE COURT: See you back here soon.

2 THE CLERK: All rise.

3 (At 10:28 a.m., the jury left the courtroom.)

4 THE COURT: You can step down, Doctor. Thank you.

5 THE WITNESS: Thank you. Sorry for the -- it's all
6 new so it's difficult.

7 THE COURT: It's all right. Wait.

8 MR. KOLMAN: I can't speak with you, so amuse yourself
9 for 20 minutes, okay.

10 THE COURT: Mr. Kolman.

11 MR. KOLMAN: Yes, your Honor.

12 THE COURT: How much longer?

13 MR. KOLMAN: Not a great deal, Judge. Not a great
14 deal, half an hour, I think, at most.

15 MR. KILROY: It will go through the end of the day and
16 into tomorrow, your Honor.

17 THE COURT: All right. See you in 20.

18 (Recess from 10:29 a.m. until 10:53 a.m.)

19 THE CLERK: All rise.

20 (At 10:53 a.m., the jury entered the courtroom.)

21 THE CLERK: Court is now open. You may be seated.

22 BY MR. KOLMAN:

23 Q. Was Dr. Dill your supervisor in any way?

24 A. Yes.

25 Q. Did you meet with Dr. Dill at any time to discuss any

1 problem that you might have?

2 A. No.

3 Q. Did there come a point where you complained about
4 Dr. Dill?

5 A. There was an incident.

6 Q. Please speak up.

7 Please speak up. If the judge says -- if there's an
8 objection, please don't talk, okay?

9 All right. If I ask you to repeat your answer, it's
10 because I haven't heard it properly, okay?

11 My question was: Did you have any -- I think it was did
12 you have any disagreement with Dr. Dill at any time?

13 A. Yeah, once.

14 Q. And when was this disagreement?

15 A. It was two years ago, I think. It was a while ago.

16 Q. And did you complain about her to anyone?

17 A. No, first she complained, so then I responded.

18 Q. She complained about you?

19 A. Yes.

20 Q. Do you recall what that was about?

21 A. Yes.

22 Q. What was it about?

23 A. It was her statement she did in front of the resident so I
24 wanted --

25 Q. One second. It was a statement that was made in front of

1 the resident?

2 A. So I just said, Can we talk in the office.

3 Q. Which -- and did you -- were you the one who made that
4 statement?

5 A. Yes.

6 Q. And what was the statement?

7 A. Can we -- can we talk. Can we talk in my office.

8 Q. Okay. And -- and who was asking if they could talk in the
9 office? Was it you or was it Dr. Dill?

10 A. It was me.

11 Q. And was there a reason you wanted to talk to Dr. Dill in
12 your office?

13 A. Yes.

14 Q. And what was that reason?

15 A. I just wanted to tell her that don't be rude to me in
16 front of the resident.

17 Q. Did you feel she had been rude?

18 A. I thought twice.

19 Q. And why did you think she had been rude?

20 A. The day before also, so I let it go the first day; then
21 second day I said, Please don't do that.

22 Q. And did she have a reaction to what you said to her about
23 being rude?

24 A. Yes, she -- yes, she did. So the conversation was very
25 short.

1 Q. And did you make any further complaint as a result of her
2 rudeness?

3 A. Please repeat the question.

4 Q. Did you make any other complaint to anyone?

5 A. No.

6 Q. Now, did there come a time when you took FMLA, family
7 medical leave?

8 A. Yes.

9 Q. And what was the family leave for?

10 A. For my heart condition.

11 Q. And do you have a heart condition?

12 A. I do.

13 Q. And what is the heart condition?

14 A. I have a pacemaker.

15 Q. You have a pacemaker?

16 A. Yes.

17 Q. And does that pacemaker or your heart condition cause any
18 issue?

19 A. Yeah, time to time.

20 Q. I'm sorry.

21 A. Time to time it does. Like yesterday, I had a spell while
22 I was sitting.

23 Q. And you say "spell"?

24 A. Yes.

25 Q. What is a spell?

1 A. All of a sudden I can feel in two, three minutes before
2 that it's going to come so that time I get short of breath. My
3 eyelids start tearing and weakness. So I cannot move or speak.
4 I know who you are, but I cannot do anything.

5 Q. Has there been a spell during the time that we've been in
6 the courtroom?

7 MR. KILROY: Objection, your Honor.

8 THE WITNESS: Yesterday, just --

9 MR. KOLMAN: Please stop.

10 THE COURT: Wait. When there's an objection, please
11 wait until I make a ruling, okay?

12 THE WITNESS: I'm very, very sorry.

13 THE COURT: Sustained.

14 BY MR. KOLMAN:

15 Q. How often do you get these spells?

16 MR. KILROY: Objection, your Honor.

17 THE WITNESS: Unpredictable.

18 THE COURT: Sustained.

19 THE WITNESS: Unpredictable.

20 MR. KOLMAN: Stop.

21 BY MR. KOLMAN:

22 Q. Has this spell ever caused you a problem in your work?

23 MR. KILROY: Objection, your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: Not at all.

1 BY MR. KOLMAN:

2 Q. Did the people who work with you have an understanding
3 that this spell can occur?

4 MR. KILROY: Objection.

5 THE WITNESS: Almost every --

6 THE COURT: Wait. Wait. Wait. Remember when there
7 is an objection, please don't answer.

8 Sustained.

9 BY MR. KOLMAN:

10 Q. At any point did you speak to Dr. Rosen or did Dr. Rosen
11 speak to you about your heart condition?

12 MR. KILROY: Objection, your Honor.

13 THE COURT: Overruled.

14 THE WITNESS: No.

15 BY MR. KOLMAN:

16 Q. Do you know if Dr. Rosen knew about your heart condition?

17 A. Yes, because he signs the FMLA papers.

18 Q. With respect to your work, is there anything that happens
19 at work that in any way affects the spells?

20 MR. KILROY: Your Honor, objection. May I be heard?

21 THE COURT: Yeah.

22 (Sidebar as follows:)

23 THE COURT: Before you go, where are you going with
24 this?

25 MR. KOLMAN: Your Honor, the issue comes up because of

1 working 10 days in a row, and because she's working 10 days in
2 a row, it increases the possibility of these spells plus she
3 could have a spell in the courtroom right now; and if she does,
4 the jury may not have any idea what's going on, and I'm
5 concerned about that, because she did have a spell -- I didn't
6 notice it. I was concentrating, but she indicated to me she
7 had a spell, and I saw one of the jurors looking at her at the
8 time because she does look strange, and it could take a minute
9 or two for her to gather herself. These spells are not
10 infrequent. So -- so for those two reasons I felt it important
11 that this just be explored.

12 MR. KILROY: Your Honor -- your Honor, they had a
13 disability claim, both under state law and federal law. Both
14 of those have been dismissed. That's the only reason this
15 could be possibly relevant to the jury.

16 THE COURT: I'm going to ask you to -- I'm going to
17 let you finish with one or two questions, but move.

18 (End of sidebar.)

19 BY MR. KOLMAN:

20 Q. Does anything -- did anything that you do in your work
21 ever affect the frequency of these spells?

22 A. If I'm tired, it will come back to back.

23 Q. When you say back to back?

24 A. It's more often. I might get three in a day.

25 Q. When you're tired?

1 A. When I'm tired.

2 Q. And when you say back to back, what are you talking about?

3 A. It might happen now, one hour later, one hour later, kind
4 of.

5 Q. Are you talking about -- I just want to clear this up.

6 A. Okay.

7 Q. Are you talking about working for periods of time when you
8 say back to back?

9 A. Yeah, if I'm working like when I'm on call, I'm working
10 ten days in a row, 12 days including the weekend, and that --

11 Q. And how many days in a row is that?

12 A. Twelve. Five regular days, five regular days, two
13 weekend, and then five another, so 12 days.

14 Q. And does that affect your ability to do MRIs?

15 THE COURT: Let's move on from this, Mr. Kolman.

16 MR. KOLMAN: Okay. Sure. Thank you.

17 BY MR. KOLMAN:

18 Q. I want to just -- just finish up just a few things.

19 When you had your meeting with -- with Dr. Rosen, did he
20 mention anything else about your quality of your work or
21 anything else about texting or not keeping up or anything else
22 at all?

23 A. Nothing.

24 Q. How -- are you -- do you feel able to -- to -- to work as
25 a -- as a radiologist?

1 A. Yes.

2 Q. Sitting here today?

3 A. Yes.

4 Q. As a result of what happened to you, did you need to seek
5 any healthcare of any kind?

6 A. Yes.

7 Q. And what kind of healthcare have you sought?

8 A. Psychiatrist.

9 Q. I'm sorry.

10 A. Psych- -- psychiatrist.

11 Q. And are you seeing a psychologist?

12 A. Psychiatrist, yeah.

13 Q. Psychiatrist?

14 A. Yeah.

15 Q. And have you been seeing a psychiatrist since this event
16 of your termination?

17 A. Yeah, little after that because in the beginning I thought
18 I can handle it, so, but --

19 Q. And why -- why are you going to the psychiatrist?

20 A. Because it's -- I have a lot of trouble sleeping, and
21 sometime I just start crying and I cannot stop. It just
22 reminds me, and it -- it is difficult sometime. I don't want
23 to do anything. I don't want to go out of the bed sometime.
24 So my husband and my doctor made the phone call.

25 Q. Have you been prescribed any medication at all in

1 addition?

2 A. I am. I am on Cymbalta, 60 milligram, and Trazodone,
3 hundred milligram.

4 Q. And do you have knowledge as to what -- what that's for?

5 A. Cymbalta is for the depressant; and Trazodone, because I
6 was having trouble sleeping.

7 Q. Did you have these problems before your termination
8 from U -- from UMass?

9 A. Never.

10 Q. Had you ever seen the psychiatrist before your termination
11 from UMass?

12 A. Never.

13 (Plaintiff counsel conferred.)

14 MR. KOLMAN: Your Honor, I have nothing more. Thank
15 you.

16 THE COURT: Thank you, Mr. Kolman.

17 And Mr. Kilroy.

18 MR. KILROY: Thank you, your Honor.

19 If I may just pull this back.

20 THE COURT: Yes.

21 CROSS-EXAMINATION

22 BY MR. KILROY:

23 Q. Good morning, Dr. Desai.

24 A. Good morning.

25 MR. KILROY: Mr. Clerk, can I have the document

1 camera, please. Just for the witness.

2 Q. Dr. Desai, I'm going to show you a document.

3 A. Okay.

4 Q. I'm going to ask you if you recognize the document?

5 Do you recognize that?

6 A. (Witness reviews the document.)

7 Q. Do you recognize what that is, Dr. Desai?

8 A. Yeah. Do I -- I haven't read the -- how can I go up and
9 down? Can I?

10 Q. No, I'm just trying to see if you recognize that this is
11 an agreement between you and UMass Memorial Medical Group, your
12 employment agreement?

13 A. Yes.

14 Q. Okay. And I'm going to show you the page 11 of that
15 document and ask if you recognize the signature on page 11?

16 A. Yes.

17 Q. And whose signature is that?

18 A. The top one is mine.

19 Q. Right. So this is the employment agreement that you
20 signed with UMass Memorial Medical Group as your employer,
21 correct?

22 A. Yes.

23 Q. And it's also signed by UMass Medical Group by Michele
24 Streeter, whom we heard about yesterday; and by Joseph
25 Ferrucci, Department of Radiology, correct?

1 A. Yeah. What is the date, 2'12. What is the year here?

2 Q. It's not listed, ma'am.

3 A. This is 2012, but it doesn't say the year.

4 THE COURT: Doctor, you need to speak up. I can't
5 hear you.

6 THE WITNESS: I was just asking what date the document
7 is.

8 THE COURT: I understand. Just speak up.

9 THE WITNESS: Okay.

10 BY MR. KILROY:

11 Q. And that's your signature, correct?

12 A. It is.

13 MR. KILROY: I ask to publish this to the jury, move
14 it into evidence.

15 THE COURT: Is it in?

16 MR. KILROY: It's not, no.

17 THE COURT: Are you offering it?

18 MR. KILROY: I am offering it, your Honor.

19 THE COURT: Any objection?

20 MR. KOLMAN: No objection, Judge.

21 THE COURT: What's the number?

22 MR. KILROY: 283, your Honor.

23 THE COURT: So marked. And it may be published.

24 (Exhibit No. 283 was admitted into evidence.)

25 BY MR. KILROY:

1 Q. So, Dr. Desai, I'm going to direct your attention to one
2 particular provision of this contract that you signed. It's on
3 page 7, Section 7.2.

4 And I'll give you a chance to look at that.

5 A. (Witness reviewing document.)

6 Q. Have you had a chance to review that?

7 A. Okay.

8 Q. You would agree, Dr. Desai, that UMass Memorial Medical
9 Group had the right to terminate your employment agreement and
10 your employment at any time upon proper notice, correct?

11 A. That's what it says here.

12 Q. And -- and that proper notice for you, because you had
13 been there more than 20 years, was 12 months notice, right?

14 A. Yes.

15 Q. And you would agree that UMass Memorial, in fact, met its
16 obligations under your contract by giving you a full 12 months
17 notice prior to your employment being terminated, right?

18 A. Yes.

19 Q. In fact, you agreed that, to your knowledge, UMass
20 Memorial met all its obligations under this employment contract
21 to you, right?

22 A. Yes.

23 Q. Now, you recall questioning over the last several days to
24 Dr. Rosen about your not being asked if you wanted to resign,
25 correct?

1 Do you recall those questions?

2 A. Yes, I do.

3 Q. Well, in fact, you had the right at any time to resign per
4 the contract, didn't you?

5 A. I didn't know that.

6 Q. You had the right -- well, you signed the contract,
7 correct, ma'am?

8 A. Yes.

9 Q. Okay. And you see here that the agreement may be
10 terminated by the practitioner at any time upon the giving of
11 as much as -- notice as is practicable to the medical group,
12 and in any event a minimum of 120 days written notice.

13 So fair to say that at all times during your one-year
14 notice period you could have resigned with 120 days notice,
15 correct?

16 A. Yes.

17 Q. You didn't need Dr. Rosen to ask you whether or not you
18 wanted to resign, did you?

19 A. I did not.

20 Q. And you actually chose not to resign, right?

21 A. Don't agree.

22 Q. I'm sorry.

23 A. I do not agree.

24 Q. So you did resign?

25 A. It's not a question of I -- I didn't think about that I

1 can ask him.

2 Q. Okay. Dr. Desai, you would agree with me that the
3 chest -- the field of chest radiology has evolved significantly
4 in the last 20 years, right?

5 A. To a certain extent.

6 Q. Only to a certain extent?

7 A. Yeah, basically the chest is the same. The CT same,
8 but the -- it looks -- it is more.

9 Q. Do you recall during this case being subject to a
10 deposition?

11 A. Yes.

12 Q. Do you recall I'm the attorney who deposed you?

13 A. I think you were too.

14 Q. Right, but I was asking you questions, correct, at the
15 deposition?

16 A. Yes.

17 Q. And at that deposition, you were represented by counsel,
18 correct?

19 A. Yes.

20 Q. And you were sworn in to tell the truth?

21 A. Yes.

22 Q. And you told the truth, correct?

23 A. Yes.

24 Q. I'm going to show you a tran- -- an excerpt from your
25 deposition. Page 60, counsel. And it's Exhibit 26 of yours.

1 MR. KOLMAN: Thanks.

2 BY MR. KILROY:

3 Q. I'm going to read my question and your answer. Page 60,
4 lines 21 to 23. And I'll ask you if I read that correctly.

5 Would you say that the field of chest radiology has
6 evolved over the past 20 years?

7 Answer: Yes.

8 Did I read that correctly?

9 A. Yes.

10 Q. In fact, you would agree that the field of chest radiology
11 has evolved significantly over the past five years prior to
12 your employment termination, right?

13 A. Yes.

14 Q. Given the significant evolution in the field of chest
15 radiology, your profession, you'd agree it's important for a
16 chest radiologist to keep pace with the evolving advances in
17 the field, right?

18 A. Yes.

19 Q. And one way to keep pace with the advances in the field is
20 to actively participate in continuing medical education
21 specific to chest radiology, right?

22 A. Yes.

23 Q. Another way to keep pace with the advances is to actively
24 be involved in research and writing within the field of chest
25 radiology, correct?

1 A. I was not on the research side, so.

2 Q. No, I understand that, but would you agree with me that
3 that's another way to keep pace with the evolution of chest
4 radiology is to be involved in research and writing specific to
5 your field?

6 A. If somebody wants to do that, yes.

7 Q. And another way to keep pace would be to actively
8 participate on committees focused on advances in the field
9 within well-known radiological societies, right?

10 A. Yes.

11 Q. Do you agree that keeping pace with advances in the field
12 of chest radiology is important to provide safe patient care?

13 A. Please repeat the question.

14 Q. Sure. Do you agree that keeping pace with advances in
15 your field of chest radiology is important to being able to
16 provide safe patient care?

17 A. I did. I did attend conferences, and I did provide the
18 quality care.

19 Q. Okay. Could you answer my question, please. My question
20 is just do you agree that keeping pace is important to provide
21 safe patient care?

22 A. Yes.

23 Q. And would you agree that UMass Memorial, as a level 1
24 trauma center and an academic medical center, attracts more
25 complex patients than, for instance, a community hospital?

1 MR. KOLMAN: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: Yes.

4 MR. KILROY: May I have the document camera just for
5 the witness, please.

6 BY MR. KILROY:

7 Q. Dr. Desai, I'm showing you a document. It's Exhibit 270
8 for identification.

9 Do you recognize that document?

10 A. Yes.

11 Q. Okay. And can you tell the jury what that document is?

12 A. It's my CV.

13 Q. And you drafted that document, correct?

14 A. Yes.

15 Q. And this CV that I'm showing you, and I'll go to the
16 bottom of the document where it has a Bates stamp CD42.

17 This is a document that was produced by your counsel
18 during this discovery, correct?

19 A. Yes.

20 Q. And this is the CV that you were using when you were
21 applying for jobs after your termination from UMass Memorial,
22 correct?

23 A. But there are two. There are pages missing here that I
24 have attended at the conference after what it says here. But
25 you can't see -- can't see for the two, so.

1 Q. Ma'am, can you answer my question, please?

2 A. Yes.

3 Q. Is this the CV that you were using when you were applying
4 for employment after your termination from employment by UMass
5 Memorial?

6 A. Including the pages which are missing.

7 Q. Well, fair to say you never produced the page that was
8 missing, correct?

9 A. We did. We did. Afterwards, when we realized. So it's
10 my counsel didn't send last two page.

11 MR. KILROY: Your Honor, may we be heard?

12 (Sidebar as follows:)

13 THE COURT: Go ahead.

14 MR. KILROY: Your Honor -- your Honor, on that --

15 THE COURT: Whisper.

16 MR. KILROY: Sorry. On that point, there was never
17 another page produced, and I don't know if we need a limiting
18 instruction or how you would typically handle that, but I don't
19 think my counsel is going to disagree there was no other page
20 produced.

21 MR. KOLMAN: I'm not certain, Judge, for what purpose
22 this is being given to the witness. Is he saying that there
23 was only one page of the résumé? I'm not sure exactly what he
24 is saying.

25 THE COURT: Well, what -- I -- I'm not sure either.

1 Where are you going with this, Mr. Kilroy?

2 MR. KILROY: Your Honor, I may have misinterpreted her
3 statement. When she said another page, it's a multi-page
4 document. So I will go ahead and fix that.

5 MR. KOLMAN: Yeah, I think -- I think she -- I think
6 when you presented it, it was one page. She's referring to all
7 the pages. I think that's the error here.

8 THE COURT: So if -- if Mr. Kilroy is correct that
9 there were multiple pages, but only one was produced, how
10 should we handle that?

11 MR. KOLMAN: Your Honor, we have, I believe, the full
12 résumé, and I did not know --

13 THE COURT: I understand that. But if was not
14 delivered, how would you have me address it?

15 MR. KOLMAN: Judge, I'm not sure in the sense
16 that -- first of all, of course, I was not counsel, and I am
17 now. I'm -- I'm happy to permit Mr. Kilroy to show her the
18 entire document, and I believe it might -- I think we have it.
19 I think -- and if we do have it as one of our exhibits, so I'm
20 happy to have him use our exhibit. I think it's number one or
21 number two on our list.

22 MR. KILROY: Your Honor, I think it's my confusion. I
23 can show her all the pages I have. I thought she was adding a
24 page that was never produced. I can show her all the pages.

25 THE COURT: All right. Please clean that up.

1 MR. KILROY: Thank you, your Honor.

2 (The Court conferred with the clerk.)

3 THE COURT: Do we have an extra -- do we have an extra
4 one of these for these guys?

5 MR. COMENZO: Thank you very much, your Honor.

6 THE COURT: You get two.

7 MR. JOHNSON: Okay. He's going to get you a set.

8 THE COURT: Yeah, we don't want this to look like a
9 program date.

10 (Laughter.)

11 THE COURT: I'm sorry. I didn't realize you didn't
12 have one.

13 MR. JOHNSON: Oh, no, that's fine. Thank you.

14 THE COURT: Go ahead --

15 MR. KILROY: Thank you, your Honor.

16 THE COURT: Mr. Kilroy.

17 BY MR. KILROY:

18 Q. Dr. Desai, I believe that was my confusion, and I
19 apologize for confusing you on my questions. I'll show you the
20 second page of your CV.

21 Is that what you were referring to that there was
22 another page?

23 A. No, more conference. It is starting the last page. There
24 should be more conference. I attended two conference in April.

25 Q. I'll show you the third page. And then I'll show you the

1 last page of the document that was your CV that was produced.

2 There we go. Now, you recognize that document as your CV,
3 correct?

4 A. I do. But it's correct, the conference, there is -- there
5 are two I attended in -- in 2018.

6 MR. KILROY: Your Honor, that's the issue.

7 THE COURT: Okay. Hold up. Let's plug in.

8 (Sidebar as follows:)

9 MR. KILROY: Essentially she's testifying that there's
10 more to her CV that was never produced.

11 MR. KOLMAN: Your Honor, what she's actually
12 testifying to is that this CV does not actually reflect
13 everything that she did since.

14 THE COURT: Hold up. Hold up. Was it produced or not
15 produced?

16 MR. KOLMAN: There is nothing more that was produced
17 here except this résumé, nothing else.

18 THE COURT: Is that CV accurate or inaccurate?

19 MR. KOLMAN: The CV is accurate up to a point, and I
20 think Dr. Desai is trying to say that there's more to it, but
21 of course linguistics are having an issue here.

22 THE COURT: Well, either that or it wasn't produced.

23 MR. KOLMAN: Your Honor, there is nothing else, and it
24 wasn't produced because it doesn't exist.

25 THE COURT: Then I'm going to let Mr. Kilroy ask her

1 about whether it was produced and -- not whether it was
2 produced, but where is it and why wasn't -- didn't she clean it
3 up.

4 MR. KOLMAN: I think that there's just a
5 misunderstanding in language, that's all.

6 (End of sidebar.)

7 MR. KILROY: May I inquire, your Honor?

8 BY MR. KILROY:

9 Q. Dr. Desai, you've indicated that there's more to your CV
10 that wasn't produced.

11 Do you know why it was never produced?

12 A. I didn't realize that my counsel did not send all the
13 papers, so.

14 Q. But in any event, the CV that was produced is the one that
15 you actually were seeking employment with, correct?

16 A. No. I had the other two conference on the CV when I -- I
17 realized that I sent it -- there are two other -- there's
18 nothing much changed, but there are two other conference.

19 Q. And which employers did you actually send this updated CV
20 to?

21 None, right?

22 A. Why are you saying that? I don't know.

23 Q. Yeah, because you didn't send an updated CV to any
24 employers, did you?

25 A. No, we sent you a month and a half ago. There was an

1 opening at Tufts, and I did send it.

2 Q. A month and a half ago, you sent an updated CV to an
3 employer?

4 A. Update is only two conferences, okay. There is --
5 otherwise, everything is the same.

6 Q. Right. So from March of 2018 to September, October of
7 2022, you used the CV that didn't have your updates on it?

8 A. No, I did use the correct CV. Please.

9 MR. KILROY: Your Honor, I would offer this into
10 evidence.

11 THE COURT: Any objection?

12 MR. KOLMAN: No, your Honor.

13 THE COURT: Does it have a number?

14 MR. KILROY: It's Exhibit 270, your Honor.

15 THE COURT: So marked.

16 (Exhibit No. 270 was admitted into evidence.)

17 MR. KILROY: And may I publish it, please?

18 THE COURT: It may be published.

19 BY MR. KILROY:

20 Q. Dr. Desai, I'm going to direct your attention to -- toward
21 the bottom of your first page of the CV. The only fellowship
22 training you list on your CV where you're trying to get a job
23 is something that occurred over 40 years ago, correct?

24 A. That's when I got thing, and that was at UMass.

25 Q. And that was not specifically to chest radiology, was it?

1 A. No, when it is body computography, it includes top to
2 bottom, including the head, the chest, the abdomen. See, it's
3 the whole body, it is not specialized for chest.

4 Q. I'll show you a second page of your CV. And you see you
5 list your positions there.

6 Do you see those?

7 A. Yes.

8 Q. You didn't update your CV when you were applying for jobs,
9 did you, with respect to your positions? Correct?

10 A. I don't remember.

11 Q. Well, you falsely list you're still an attending
12 radiologist for Clinton Hospital and Marlborough Hospital,
13 correct?

14 A. That is nothing falsely. I'm terminated, so there is
15 nothing to lie about that.

16 Q. Well, ma'am, you said -- you said --

17 A. Yeah, I agree, but I don't remember whether it is
18 corrected or not, okay.

19 Q. But you understand employers are going to look at where it
20 says to the present and think you're still employed by Clinton
21 and Marlborough as an attending physician, correct?

22 A. Yeah, but some of the résumés I sent was in the year I was
23 still employed, too.

24 Q. You're claiming you were -- you sent this out during the
25 one-year notice period?

1 A. Some of them.

2 Q. Well, ma'am, you testified at deposition. You know that's
3 not accurate, correct?

4 A. That --

5 Q. You didn't apply for any job for 15 months. So the entire
6 notice period, you didn't apply for a job.

7 Do you remember that?

8 A. Yes.

9 Q. So you didn't send this out during the notice period, did
10 you?

11 A. Yes.

12 Q. Yes, you didn't, correct?

13 A. Yes.

14 Q. Okay. And you also falsely list that you're still an
15 associate professor.

16 That's not true, is it?

17 A. Where? Where would that?

18 Q. I'm sorry. Under professional appointments, 1992 to the
19 present, clinical associate professor and attending
20 radiologist.

21 That's false on your résumé also, right?

22 A. Yes, because I was terminated.

23 Q. And this is the résumé you had been expecting employers to
24 review when you're trying to get a job up until six weeks ago,
25 as you said, you just sent out this résumé?

1 A. No, there were other ones. I'm just saying the latest was
2 that, okay.

3 Q. But you didn't make those changes on the latest one, did
4 you?

5 A. I don't remember.

6 Q. In terms of being active in societies dedicated to
7 radiology, your only listing in your résumé shows that you were
8 active 40 years ago, correct? Do you remember that?

9 A. Yes.

10 Q. And that's the Radiological Society of North America where
11 you had a junior membership that ended in 1981, right?

12 A. Yes.

13 Q. You're aware, I assume, being a radiologist for the past
14 29 years or so that the Radiology Society of North America is
15 the largest radiology society in the world, correct?

16 A. Yes.

17 Q. They have somewhere between 40 and 60,000 members, right?

18 A. Yes.

19 Q. And you yourself have not attended any Radiology Society
20 of North America meetings at least since 1981; isn't that
21 right?

22 A. Yes.

23 Q. At the bottom of the third page of your résumé, you begin
24 to discuss learning experiences, correct?

25 A. Say that again.

1 Q. Bottom of that page --

2 A. Yeah.

3 Q. -- you list your learning experiences, right?

4 A. Yes.

5 Q. And it goes on to the next page, and at least as your CV
6 shows, you stopped all learning experiences in 2015, right?

7 A. No.

8 Q. Well, is there something on that CV that shows otherwise?

9 A. Here it does not, but I told you I attended.

10 Q. And as of September 2020, you hadn't updated this résumé
11 when you were applying for jobs, right?

12 A. I don't remember.

13 Q. You don't remember?

14 A. Like I said, I didn't -- otherwise, I don't know if I
15 corrected it or not.

16 THE COURT: Dr. Desai, can you speak up, please.

17 THE WITNESS: Sure.

18 BY MR. KILROY:

19 Q. I'll try and refresh your recollection, Dr. Desai. And
20 this is from your deposition, September of 2020.

21 MR. KILROY: Just for the witness, please.

22 Q. And I asked you the question -- counsel, it's page 53.

23 MR. KOLMAN: Thank you.

24 MR. KILROY: Line 16.

25 Q. And you'll see at the top, conferences and certificates.

1 The last time you attended any conference was five
2 years ago in 2015, right?

3 And then you state, Yeah, I see that, but the thing,
4 you see, many time I go, and I did not update the CV.

5 Q. So as of September of 2020, you hadn't updated your CV,
6 right?

7 A. Yes.

8 Q. And you admit that you didn't update it despite claiming
9 you were trying to find another job, right?

10 A. Yeah, I overlooked certain part, yes.

11 Q. Do you believe, Dr. Desai, given your testimony where you
12 agreed regarding the significant evolution of chest radiology,
13 that not listing continuing medical education after 2015 would
14 reflect favorably upon you regarding remaining current in the
15 field?

16 A. Normally when you apply for the job they don't only look
17 at how many conference. It is years of experience and all that
18 they look to. And they speak to the previous employer what
19 they say. Usually jobs are given that way, not just from the
20 paper.

21 Q. Right. So could you answer my question, please.

22 A. Yes. What is the question?

23 Q. Sure. It's given your testimony under oath here
24 concerning the significant advances in chest radiology,
25 particularly in the last five years, do you think that listing

1 no continuing medical education after 2015 reflects favorably
2 upon your commitment to remain current in your field?

3 A. Like I said, I attended in 2018, too. So there is -- main
4 thing is my experience of so many years. It shouldn't matter
5 just attending the conference, there should be more factors
6 than that.

7 Q. I'll try it one more time, Dr. Desai. I'm just asking if
8 you agree whether or not the fact that you left blank from 2015
9 on when you're applying for jobs, do you think that reflects
10 favorably on your commitment to remain current in the field?

11 A. Maybe.

12 Q. Maybe?

13 A. Yes.

14 Q. Now, Dr. Rosen, as your chair, he actually offered to
15 consider -- consider for you any education or career
16 development opportunities you might be interested in, right?

17 A. Not that I recall.

18 Q. Okay. I'm going to show you Exhibit 277 for
19 identification.

20 Do you recognize that document, ma'am?

21 A. Yes.

22 Q. And this is the 2012 to 2013 faculty annual performance
23 review of you, correct?

24 A. Yes.

25 MR. KILROY: I'd like to offer this into evidence,

1 please.

2 THE COURT: What was the number?

3 MR. KILROY: 277, your Honor.

4 THE COURT: Any objection?

5 MR. KOLMAN: No.

6 THE COURT: So marked.

7 (Exhibit No. 277 was admitted into evidence.)

8 BY MR. KILROY:

9 Q. So in this performance review, I'm going to turn to the
10 fifth page where we have Dr. Rosen's supervisor comments. And
11 I'll read to you -- well, first off, is that your signature?

12 A. It is.

13 Q. Okay. So you received this evaluation, correct?

14 A. Yes.

15 Q. And he states to you, I have offered to consider any
16 education or career development opportunities that Dr. Desai
17 might be interested in, right?

18 A. Yes.

19 Q. And, Dr. Desai, you actually never requested any career
20 development or educational opportunities as offered by
21 Dr. Rosen, did you?

22 A. No.

23 (Defendant counsel conferred.)

24 BY MR. KILROY:

25 Q. With respect to any scholarship, that is research and

1 writing activities, all publications by you stopped over
2 20 years ago, correct?

3 A. Yes.

4 Q. Do you believe that the fact that you have not published
5 on any topic in your field in the last two decades reflects
6 favorably upon your applying for jobs?

7 A. I do not know.

8 Q. You don't know?

9 A. Yeah, maybe, but I don't -- I don't think -- depending on
10 what kind of job. If you're looking for -- every job unless it
11 is academic. Like I said, I'm on a clinical track not on a
12 research track, so.

13 Q. You're clinical?

14 A. And I was never given academic time, too, to do all this.
15 My main focus was doing the clinical work and teaching the
16 residents.

17 Q. I'm going to show you the next exhibit, Exhibit 274 for
18 identification, please. 274.

19 Do you -- do you recognize that document, Dr. Desai?

20 A. Yes.

21 Q. And this is your 2009 to 2010 faculty evaluation, correct?

22 A. Yes.

23 Q. And you understood that this evaluation was just in your
24 role as a faculty member of the medical school, right?

25 A. Yes.

1 MR. KILROY: Okay. I'd like to offer this into
2 evidence, your Honor.

3 THE COURT: What number?

4 MR. KILROY: 274.

5 THE COURT: Say what?

6 MR. KILROY: 274, your Honor.

7 MR. KOLMAN: No objection.

8 THE COURT: So marked.

9 (Exhibit No. 274 was admitted into evidence.)

10 BY MR. KILROY:

11 Q. Dr. Desai, I'm going to move to the second page of this
12 document.

13 A. Okay.

14 Q. And you'll see under Section III, research, creative and
15 scholarly activities. You'd agree with me that you did not
16 list anything there, correct?

17 A. Yes.

18 Q. And likewise, under Section IV C, regional, national and
19 international committees and other service activities, you
20 listed nothing, correct?

21 A. Yes.

22 MR. KILROY: I'd like to show the witness 275 for
23 identification, please.

24 BY MR. KILROY:

25 Q. Dr. Desai, do you recognize this document?

1 A. Yes.

2 Q. And this is your 2010 to 2011 faculty review, correct?

3 A. Yes.

4 MR. KILROY: I'd like to offer this into evidence,
5 your Honor, as Exhibit 275.

6 THE COURT: So marked.

7 (Exhibit No. 275 was admitted into evidence.)

8 BY MR. KILROY:

9 Q. And, Dr. Desai I'm going to show you the second page of
10 this one as well. This is another year where you show no
11 research, creative or scholarly activities at all, correct?

12 A. Yes.

13 Q. And another year, Section IV C, you've had no external
14 service activities for regional, national, or international
15 committees or any professional organizations, right?

16 A. Yes.

17 Q. And Section VI E, describing efforts to improve quality
18 and safety of patient care, you didn't include anything, did
19 you?

20 A. No.

21 Q. But you did include for professional development that you
22 had attended a course at Harvard in March of 2011, right?

23 A. Yes.

24 Q. So you knew enough to include professional development
25 courses if you took them, right?

1 A. Yes.

2 MR. KILROY: I'd like to show the witness 276 for
3 identification, please.

4 BY MR. KILROY:

5 Q. Dr. Desai, do you recognize that document?

6 A. Yes.

7 Q. This is your 2011 to 2012 faculty review, correct?

8 A. Yes.

9 MR. KILROY: I'd like to offer this into evidence,
10 your Honor, 276, please.

11 THE COURT: So marked.

12 (Exhibit No. 276 was admitted into evidence.)

13 BY MR. KILROY:

14 Q. If we look at the third page, Dr. Desai -- the second
15 page, I'm sorry. Section III. This is the third year in the
16 row no research, creative or scholarly activities, right?

17 A. Yeah, I already told you I was not on research side.

18 Q. And third year in a row you have absolutely zero
19 professional service for regional, national or international
20 committees or professional organizations, right?

21 A. Yes.

22 Q. And yet another year where you've listed nothing by way of
23 efforts to improve quality or safety of patient care, correct?

24 A. Yes.

25 Q. And in professional development, you had none that year,

1 right?

2 A. Yes.

3 MR. KILROY: I'd like to show the witness 277 for
4 identification, please.

5 THE COURT: I've got 277 as --

6 MR. KILROY: Oh, it's already in.

7 THE COURT: -- 12 and 13; is that correct?

8 MR. COMENZO: That's what I have.

9 MR. KILROY: That's correct, your Honor. So it's in.
10 Thank you, your Honor. I show the witness 277.

11 BY MR. KILROY:

12 Q. This is your faculty review for 2012-2013, correct?

13 A. Yes.

14 Q. And if we look at Section III, we're now at the fourth
15 year, no research, creative or scholarly activities, right?

16 A. Yes.

17 Q. Another year with no professional service of any kind,
18 correct?

19 A. Yes.

20 Q. Another year where you show no effort with respect to
21 improving quality or safety of patient care, correct?

22 A. Yes.

23 Q. And another year where you've listed nothing by way of
24 your own professional development, right?

25 A. Yes.

1 MR. KILROY: For identification 278, please. Exhibit
2 278.

3 BY MR. KILROY:

4 Q. Did do you recognize that document, Dr. Desai?

5 A. Yes.

6 Q. There is your 2013 to 2014 faculty annual performance
7 review, correct?

8 A. Yes.

9 MR. KILROY: I'd like to offer this into evidence,
10 please, your Honor.

11 THE COURT: So marked.

12 (Exhibit No. 278 was admitted into evidence.)

13 BY MR. KILROY:

14 Q. If we look at Section VI E, we're yet in another year
15 without improving quality or safety of patient care, right?

16 A. Yes.

17 Q. And no activity on your part for your own professional
18 development, right?

19 A. Yes.

20 Q. Now -- and this year your chair notes they discussed
21 options for you to be granted academic time, right?

22 Do you see that?

23 A. Yes.

24 Q. Okay. And you recall Dr. Rosen actually talked to you
25 about the fact that you could be granted academic time, right?

1 A. Yes.

2 Q. And you'll recall that when he spoke with you, he made
3 clear that at that time you didn't meet the requirements to be
4 granted academic time under the policy, did you?

5 A. I -- I checked the policy and policy says the clinical
6 work, teaching the resident, and I was a committee member of
7 a -- of quality and for my patient safety, so actually I do
8 meet three criteria.

9 Q. I just ask you to listen to my question, please.

10 My question was: Did Dr. Rosen at that time tell you
11 you didn't meet the requirements under the policy?

12 A. Yeah, he did, but like I said there are three criteria
13 which I fit.

14 Q. And he noted to you that he couldn't modify the policy for
15 you specifically on an individual basis; isn't that right?

16 A. He didn't have to qualify -- modify anything because I
17 meet the criteria of clinical work, teaching the resident
18 medical student and --

19 Q. Your testimony is that the --

20 A. That's what the policy says. The policy says.

21 Q. I haven't completed my question, ma'am.

22 A. Okay.

23 Q. Your testimony is that teaching at the view box that
24 that's academic time?

25 A. Teaching at the view box, a lot more than giving

1 once-a-month conference. I do four to five times a week.

2 Q. I'm just asking you is that your --

3 A. Yeah --

4 Q. -- testimony that --

5 A. -- because it doesn't specify it's only lectures in the
6 policy.

7 Q. And who -- who wrote the policy; do you know?

8 A. Probably department.

9 Q. Are you aware of anyone being granted academic time just
10 for teaching at the view box? Just for teaching at the view
11 box, ma'am?

12 A. I do not know.

13 Q. Yeah. And the reality is, Dr. Desai, you were asking for
14 academic time without having to perform academic research or
15 writing, right?

16 A. I told you research and writing, I was not on that track.
17 I was on the clinical side.

18 Q. Right, but I'm just -- my question is: You were asking
19 for academic time without having to perform research or
20 writing; isn't that true?

21 A. Yes.

22 Q. And, Dr. Rosen, during several meetings with you over time
23 discussed this very issue of academic time, didn't he?

24 A. Yes.

25 Q. And he specifically told you you could submit a proposal

1 to him in writing for how you wanted to use any academic days
2 that you were proposing, didn't he?

3 A. Yes, but I would like to tell you that how many attending
4 in the department has a proposal.

5 Q. And, ma'am, when your chair invited you to submit a
6 written proposal, you never did, did you?

7 A. I did not.

8 Q. Do you think it would have been helpful for Dr. Rosen to
9 understand what your proposal was for academic time for him to
10 evaluate whether or not you were entitled to it?

11 A. Yes.

12 Q. And you -- you chose not to afford him that right to see
13 what you were going to propose, right?

14 A. Please repeat the question.

15 Q. I'll withdraw the question.

16 Now, you were not seeking an exception to the policy
17 for academic time where you wouldn't have to perform academic
18 research and writing based on your age, were you?

19 A. Academic time has no relation with the age.

20 Q. No relationship to the age, okay.

21 A. But --

22 Q. You've answered the question, ma'am.

23 A. Yeah.

24 Q. In -- in fairness, Dr. Desai, you wanted to be granted
25 academic time because you wanted days off where you didn't have

1 to work while getting paid; isn't that true?

2 A. I wanted academic time when I was working 12 days in a row
3 to have no responsibility for clinical work that day, and I
4 only asked for 12 days per year, and everybody in the
5 department gets once a week starting from the date they start
6 to work, come on the job.

7 MR. KILROY: Your Honor, may I offer into evidence
8 sworn testimony from Dr. Desai. It's page 112 of her
9 deposition tran --

10 THE COURT: Show -- show your brother, please.

11 MR. KOLMAN: It's 112.

12 (Counsel conferred.)

13 MR. KOLMAN: Okay. That's fine.

14 BY MR. KILROY:

15 Q. Dr. Desai, I'm going to show you your testimony under
16 oath. Page 112, lines 12 to 14. I'll ask you if I read your
17 testimony correctly.

18 Question: What were you going to do with your academic
19 time?

20 Answer: Take a break so I can recuperate for the next
21 day.

22 A. Yes.

23 MR. KILROY: I offer that into evidence, your Honor.
24 I believe it's an excerpt from Exhibit 26.

25 THE COURT: Does it have a number?

1 MR. KILROY: It's an excerpt from Exhibit 26, your
2 Honor.

3 THE COURT: So we'll make it 26-1, how's that?

4 MR. KILROY: Thank you, your Honor.

5 THE COURT: And then I'm going to need you to redact
6 it, show your brother, and then make sure Mr. Castles, most
7 importantly, is on board with it.

8 So that's 26-1. Thank you.

9 MR. KILROY: Thank you, your Honor.

10 (Exhibit No. 26-1 was admitted into evidence.)

11 BY MR. KILROY:

12 Q. Dr. Desai, as you sit here under oath, you can't identify
13 a single radiologist who worked for Dr. Rosen who did not
14 perform scholarly activity or research activity, just like you,
15 no research, no writing, but who was nonetheless granted
16 academic time, can you?

17 A. Please repeat the question. I didn't quite -- the name of
18 the person.

19 Q. You can't identify anyone who worked for Dr. Rosen, who
20 received academic time, who did not perform research or
21 writing, correct?

22 A. There are a lot of physicians, but -- see, like, Dr. Maria
23 Barile, she started the job, and she has it from day -- first
24 week academic time.

25 Q. Can you tell me --

1 A. But I don't understand that they already produced the
2 papers or something in that one week, or they already give the
3 proposal.

4 THE COURT: So, Doctor -- Doctor, Mr. Kolman will
5 follow up and --

6 THE WITNESS: Okay, fine.

7 THE COURT: -- ask you to clarify.

8 THE WITNESS: Okay.

9 THE COURT: But what I'm going to ask you to do --

10 THE WITNESS: Answer the question, okay.

11 THE COURT: Just -- just -- just let me finish,
12 please. So what I'm going to ask you to do is wait until
13 Mr. Kilroy finishes his answer, and then answer the question in
14 the form that it's asked; and if you can't answer it in that
15 form, please say so.

16 THE WITNESS: Okay.

17 THE COURT: You can't ask him questions. That's just
18 not the way it works.

19 THE WITNESS: Fine. Fine.

20 THE COURT: All right. Mr. Kilroy, please.

21 THE WITNESS: Sorry about that.

22 MR. KILROY: Thank you, your Honor.

23 BY MR. KILROY:

24 Q. Dr. Maria -- Marie Barile, you don't know what she was
25 doing for academic research and writing, do you?

1 A. I don't.

2 Q. So the answer to my question then is you can't identify
3 anyone who worked for Dr. Rosen who was granted academic time
4 who didn't perform research and writing, right?

5 A. No, I don't know.

6 Q. And actually you were seeking academic time based on your
7 statement that you wanted to be grandfathered in based on your
8 years of service, right?

9 A. Yes, because when I started the job I --

10 Q. You've answered the question, ma'am.

11 A. Yes.

12 Q. And you can't identify any radiologist who Dr. Rosen
13 granted academic time to based on seniority, can you?

14 A. Yes.

15 Q. Meaning you can't identify anyone, correct?

16 A. It's because I don't know what other people do. I don't
17 keep tab of them, what -- who did what. It's not my job.

18 Q. You wanted to use your seniority and your age to get a
19 benefit that no other radiologist received; isn't that true?

20 A. Yes.

21 MR. KILROY: 279, please.

22 BY MR. KILROY:

23 Q. I'm going to show you Exhibit 279 for identification.

24 Do you recognize that document?

25 A. Yes.

1 Q. This is your 2014 to '15 faculty evaluation, correct?

2 A. Yes.

3 Q. And if we skip ahead on it to Section VI E, we have yet
4 another year where you're not engaging in efforts to improve
5 quality or safety of patient care, right?

6 A. Yes.

7 Q. And another year, no professional development activities,
8 correct?

9 A. Yes.

10 (Defendant counsel conferred.)

11 MR. KILROY: I apologize, your Honor, I didn't move it
12 into evidence.

13 I move 279 into evidence.

14 THE COURT: And that's '14 and '15? So marked.

15 (Exhibit No. 279 was admitted into evidence.)

16 MR. KILROY: Thank you, your Honor.

17 BY MR. KILROY:

18 Q. I'm going to show you Exhibit 280 for identification.

19 Dr. Desai, this is -- you recognize this document,
20 correct?

21 A. Yes.

22 Q. This is your annual faculty report for 2015 to 2016,
23 correct?

24 A. Yes.

25 MR. KILROY: I'd like to move this into evidence,

1 please. Exhibit 280.

2 THE COURT: So marked.

3 (Exhibit No. 280 was admitted into evidence.)

4 BY MR. KILROY:

5 Q. And if we jump ahead --

6 THE COURT: So that's what, '16, '17?

7 MR. KILROY: This is '15 to '16, your Honor.

8 THE COURT: Oh, sorry. Thank you.

9 BY MR. KILROY:

10 Q. Yet another year, no efforts to improve quality or safety
11 of patient care, correct?

12 A. Yes.

13 Q. And again no efforts on your part for professional
14 development?

15 A. Yes.

16 MR. KILROY: 281. Your Honor, this is in evidence
17 already.

18 BY MR. KILROY:

19 Q. I'm going to show you what's Exhibit 281.

20 A. Uh-huh.

21 Q. This is your 2016 to '17 annual faculty review, correct?

22 A. Yes.

23 Q. And yet another year, no efforts to improve quality or
24 safety of patient care, right?

25 A. Yes.

1 Q. And you've done nothing by way of professional development
2 for another year, right?

3 A. Yes.

4 Q. And yet it's another year where the topic comes up between
5 you and Dr. Rosen where you continue to request allocation of
6 academic time, and you continue to demand to be let out of call
7 responsibilities, right?

8 A. Yes.

9 Q. And he makes clear to you that we've previously discussed
10 this with both you and representatives from the HR department,
11 right?

12 A. Yes.

13 Q. And he had made clear to you that you weren't entitled to
14 academic time, right?

15 A. Yes.

16 Q. And he also made clear to you that as a patient safety
17 concern, he needed you to take your fair share of call; isn't
18 that right?

19 A. I always did personal call, yes.

20 MR. KILROY: 282, Exhibit 282 for identification,
21 please.

22 BY MR. KILROY:

23 Q. Dr. Desai, do you recognize this as your 2017 to 2018 --

24 A. Yes.

25 Q. -- faculty annual review?

1 MR. KILROY: May I offer this into evidence, please,
2 282.

3 THE COURT: So marked.
4 (Exhibit No. 282 was admitted into evidence.)

5 BY MR. KILROY:

6 Q. Dr. Desai, as we've done in the past, I'll move forward in
7 the document. Another year with no efforts on improving
8 quality, safety, efficacy of patient care, right?

9 A. Yes.

10 Q. And another year you've been silent on professional
11 development, correct?

12 A. Yes.

13 Q. And Dr. Rosen's summary comments this year, fair to say he
14 notes that a resident had raised concerns that you were relying
15 on them to interpret the more sophisticated vascular studies,
16 right?

17 A. I would like to see the case who I read tried with on.

18 Q. I'm sorry. I didn't understand.

19 A. I would like to see the case who I read with on, but if it
20 is, yes.

21 THE COURT: All right. Let's take the second break
22 here.

23 Ladies and gentlemen, a couple things. Just FYI.
24 FYI, all of the documents that you've been seeing and the
25 lawyers have been throwing around all over the place, when you

1 retire to deliberate, the screen in there that you have is
2 called JERS. It means Jury Evidence Retrieval System. You're
3 going to be able to call up each one of those documents in
4 combination or alone or side by side, enlarge, highlight, do
5 whatever you want. So I appreciate we're throwing a lot of
6 stuff at you, but it's all things that you're going to be able
7 to call up when you are deliberating. So that's the first
8 thing.

9 The second thing is this, and it's only a suggestion,
10 and I need you to talk about it right now and let me know when
11 we form up again. If you all wanted to go until three o'clock
12 tomorrow, we would buy you lunch as a reward for putting up
13 with us all week.

14 So -- and again, we understand that we have asked you
15 to come in until one o'clock until the case is finally given to
16 you, but if your schedules allow that and that's what you want
17 to do, we'll do it. If not we'll just go to your regular
18 schedule.

19 Okay. See you in a bit.

20 THE CLERK: All rise.

21 (At 12:01 p.m., the jury left the courtroom.)

22 THE COURT: How much longer?

23 MR. KILROY: I would guess an hour and a half, your
24 Honor, thereabouts.

25 THE COURT: All right. Thank you.

1 MR. KOLMAN: Your Honor, if I may. So my experts are
2 coming in Monday, Tuesday, and just -- and I've spoken to
3 Mr. Kilroy about this. His first witness should be ready to go
4 after.

5 THE COURT: Mr. Kolman, I'm old, speak up.

6 MR. KOLMAN: I'm sorry, your Honor --

7 THE COURT: You can step down, Doctor. Doctor, you
8 can -- be seated everybody else.

9 MR. KOLMAN: I spoke to Mr. Kilroy, and I gave him a
10 heads up that it's likely that I would finish or that Dr. Desai
11 would be finished before the end of the week. My experts are
12 coming in Monday or Tuesday.

13 THE COURT: So do we -- I presume you have somebody?

14 MR. KILROY: I have two witnesses, your Honor, but
15 they're two fact witnesses. My guess is I'll spend about a
16 half hour with each of them, and then our witnesses who have to
17 travel out-of-state are scheduled to come in one on Sunday, one
18 on Tuesday. So I won't have anyone other than our two fact
19 witnesses tomorrow. And then actually I don't anticipate
20 anyone other than my experts coming in or one expert and one --
21 Diana Litmanovich.

22 MR. KOLMAN: I may have questions for these witnesses,
23 but I don't know who they are, your Honor.

24 MR. KILROY: Well, I can tell you. It's Mona
25 Korgaonkar.

1 MR. KOLMAN: I'm sorry. Who?

2 MR. KILROY: Dr. Korgaonkar and Mowllood, Randa
3 Mowllood.

4 THE COURT: Okay. So I just would like to at least
5 buy these guys lunch so -- and -- and not have -- more
6 importantly, not have dead time. So if you guys have fact
7 witnesses that you can get here, get them here.

8 MR. COMENZO: Will do, your Honor.

9 THE COURT: All right. See you in a couple.

10 (Recess from 12:03 p.m. until 12:18 p.m.)

11 THE CLERK: All rise.

12 (At 12:18 p.m., the jury entered the courtroom.)

13 THE CLERK: Court is now open. You may be seated.

14 THE COURT: What did you all decide?

15 JURORS IN UNISON: Yes.

16 THE COURT: Yes to lunch?

17 JURORS IN UNISON: Yes.

18 THE COURT: I love you guys. All right. Good.

19 JUROR: Do we get to choose?

20 THE COURT: I think -- Marty, do we have -- is this
21 the place where we get the menu?

22 THE CLERK: No.

23 THE COURT: I think it is, right. Is this the one we
24 use, Theater?

25 THE CLERK: I think they bring, like, just a platter.

1 THE COURT: Oh, I think it's a platter. Yeah, I was
2 just going to say, by this time Friday, by this time tomorrow
3 you're going to be going, Is this it?

4 All right. Go ahead, Mr. Kilroy.

5 MR. KILROY: Thank you, your Honor.

6 BY MR. KILROY:

7 Q. Dr. Desai, you agree that Dr. Rosen, as the chair of
8 radiology, had an obligation to ensure patient safety for the
9 patients served at UMass Memorial Hospital, right?

10 A. Yes.

11 Q. And you'd agree that Dr. Rosen, as chair of radiology, had
12 an obligation to ensure patient safety in general?

13 A. Yes.

14 Q. And as part of that he had an obligation to ensure the
15 quality of the radiological reads by the radiologists within
16 the department, right?

17 A. Yes.

18 Q. And that would include you, right?

19 A. Yes.

20 Q. And you'd agree, as part of his job duties as chair, he
21 has to make decisions in his role regarding the quality of the
22 radiologists who work within his department, right?

23 A. Yes.

24 Q. And, in fact, you believe or you would agree that
25 Dr. Rosen, as chair and as part of his job duties, should, in

1 fact, take action if he believes a radiologist's quality is
2 substandard, right?

3 A. In my case, I don't agree with that.

4 Q. Right. I didn't ask you that question though. I'm just
5 asking in general. Dr. Rosen, as the chair of radiology,
6 if -- if he believes that a radiologist who works for him
7 quality is substandard, you agree he should take action on that
8 belief, right?

9 A. Yes.

10 Q. And you would agree that his decision to do a qualitative
11 assurance analysis of your chest CTs falls within his role as
12 the chair of the department, right?

13 A. Yes, if it is done the right way.

14 Q. And with respect to his decision whereby he restricted you
15 from performing CT scans, you understood he made that decision
16 based on determining that your work with respect to CT scans
17 was of poor quality, right?

18 A. It is his -- his decision, but I don't agree.

19 Q. Right. But you understood that's what --

20 A. Yes.

21 Q. -- how he made his decision?

22 A. Yes.

23 Q. You understood he believed, based on the analysis, that
24 your work was of poor quality, correct?

25 A. According to him.

1 MR. KILROY: Counsel, page 237 of the deposition.
2 It's page 237, lines 19 to 22.

3 Your Honor, I would like to offer into evidence, I
4 believe now it would be Exhibit 26-2, an excerpt from
5 Dr. Desai's under-oath deposition.

6 THE COURT: So marked.
7 (Exhibit No. 26-2 was admitted into evidence.)

8 MR. KILROY: And could I have it published to the
9 jury, please.

10 THE COURT: You may.

11 MR. KILROY: Thank you.

12 BY MR. KILROY:

13 Q. Dr. Desai, you recall your deposition, correct?

14 A. Yes.

15 Q. And I asked you: Are you claiming that the decision that
16 was made to restrict your privileges with respect to CT scans
17 was done because of your age?

18 And you stated: No.

19 Correct?

20 A. At the time, but after discovery papers, the
21 recommendation was there. I don't agree because at that time I
22 didn't have all the information.

23 Q. So you have your -- you're changing -- you're changing
24 your under-oath testimony?

25 A. Because now at that time I didn't --

1 Q. Just yes or no?

2 A. I am changing --

3 Q. Okay.

4 A. -- because I have more informing from the discovery.

5 Q. Right. And you remember at deposition you were -- you
6 were represented by counsel at the deposition, weren't you?

7 A. I was.

8 Q. And your deposition -- your second day of deposition
9 occurred in October of 2022.

10 Do you remember that?

11 A. Yes.

12 Q. Yes. And you, while represented by counsel, had the
13 opportunity to correct your deposition testimony, didn't you?

14 A. I cannot, because those 200,000 pages I didn't have all
15 that. See, all -- all the papers you guys submitted, I did not
16 have. So when I looked at it, it takes time to look at all
17 those papers. So discrimination was my age, that's all I'm
18 saying. CT scan has nothing to do with it.

19 Q. There's no question pending right now, ma'am. There is no
20 question.

21 A. Okay.

22 Q. I understand that I misspoke. It was October of 2020, not
23 '22.

24 And I just want to make clear, you understood after
25 your deposition, you had the right to make changes to your

1 transcript, didn't you?

2 A. Yes.

3 Q. And, in fact, you made a whole host of changes to your
4 transcript, didn't you?

5 A. Yes.

6 Q. And you made those changes while represented by counsel?

7 A. Yes.

8 MR. KILROY: Exhibit for identification, please.

9 (Defendant counsel conferred.)

10 MR. KILROY: This would be 353, your Honor.

11 THE COURT: And it's not in?

12 MR. KILROY: It's not in, your Honor.

13 BY MR. KILROY:

14 Q. Dr. Desai, I'm showing you a letter dated December 10,
15 2020, addressed to me from your counsel Brendan Sweeney.

16 Do you see that?

17 A. Yes.

18 Q. And in this letter it says, Enclosed please find a copy of
19 the signed deposition transcript errata sheet (with
20 corrections) from Dr. Charu Desai's deposition on October 22,
21 2020, correct?

22 A. Yes.

23 Q. And I go to the last page and it states, I have read the
24 foregoing transcript of my deposition and except for any
25 corrections or changes noted above, I hereby subscribe to the

1 transcript as an accurate record of the statements made by me.
2 Executed this 29th day of November, 2020.

3 And that's your signature, correct?

4 A. Yes.

5 Q. And you read your deposition before you made changes,
6 didn't you?

7 A. Yes.

8 Q. And just to remind you, the testimony we were looking at
9 was on page 237, lines 19 to 22.

10 Do you see that?

11 A. Yeah.

12 Q. Do you see anywhere in your errata sheet where you got to
13 make changes, page 237 listed?

14 A. No, but I told you that I did not have all the information
15 at the time.

16 Q. So you had been litigating the case for -- since the
17 summer of 2018, but you claimed you didn't have information to
18 know whether or not --

19 A. No --

20 Q. Excuse me. You didn't have information to make a decision
21 whether or not you were facing discrimination based on age due
22 to the restriction of your privileges; that's your testimony?

23 A. No. I knew, but I did not have the proof at the time.

24 Q. Well, ma'am, I didn't ask you for proof. I said, Are you
25 claiming that the decision was made to restrict your privileges

1 with respect to CT scans because of your age?

2 Your answer was: No.

3 A. Yeah, at the time I told you.

4 Q. So it's only when you have to come to court to testify at
5 trial that you would now claim age, right?

6 A. Say it -- say it -- please repeat.

7 Q. Sure. So when you're under oath at deposition, two years
8 into the litigation, represented by counsel, and you're not
9 prepared for my question, and I ask you: Are you claiming that
10 the decision that was made to restrict your privileges with
11 respect to CT scans was done because of your age, and you say
12 no, your answer only changes when you have to come to court to
13 testify because if you say -- if you keep no, it's going to
14 hurt your case, right?

15 A. It's nothing to hurt. I'm just telling you the truth,
16 that I realized afterwards when I went through 200 pages of the
17 paperworks which was submitted by UMass.

18 Q. And what is it --

19 A. And the email trail and all that, so then I realize it was
20 related to the age.

21 MR. KILROY: Counsel, page 79.

22 MR. COMENZO: Thank you.

23 MR. KILROY: Your Honor, I'll be offering -- this will
24 be now 26-3, the substantive testimony of Dr. Desai. It's
25 page 79 of her transcript, lines 4 through 13.

1 BY MR. KILROY:

2 Q. Dr. Desai, I'm showing you another excerpt of your
3 deposition when you were under oath.

4 And it states: So you've testified that Dr. Rosen had
5 an obligation to maintain patient safety, an obligation to
6 maintain quality, an obligation as part of his job duties to
7 take action if he believes a radiologist's quality is
8 substandard, and then he actually took action in the form of a
9 no-cause termination to you based on his assessment that your
10 quality was substandard; is that fair?

11 And you state, I believe that's what he did.

12 Right? I read that correctly?

13 A. Yeah.

14 Q. So over two years after you were terminated from
15 employment --

16 MR. KILROY: Your Honor, may I have this admitted? I
17 don't know if I had asked.

18 THE COURT: You may.

19 (Exhibit No. 26-3 was admitted into evidence.)

20 BY MR. KILROY:

21 Q. Over two years from your termination from employment, you
22 admitted under oath in the presence of your counsel that your
23 employment was terminated because your quality was substandard,
24 right?

25 A. But I do not agree.

1 Q. Now, Dr. Desai, you'd agree that one way to assess quality
2 so there's no risk of being discriminatory is to ask for an
3 independent reviewer to look at the radiology records, right?

4 A. Yes.

5 Q. And you'd agree that by doing it that way, it shows
6 Dr. Rosen is trying to remove himself from being the one
7 assessing your quality directly so that he could have a
8 third-party reviewer make the assessment without knowing it was
9 you, right?

10 A. If it is done the right way.

11 Q. That's not my question, ma'am. I'm going to ask you to
12 focus --

13 A. Yes.

14 Q. -- on my question. Okay.

15 MR. KILROY: Counsel, page 94.

16 Your Honor, I'm going to mark this as 26-4, excerpt
17 from Dr. Desai's deposition transcript, pages 94 through --
18 lines 10 through 14.

19 And can I have it admitted into evidence?

20 THE COURT: So marked.

21 (Exhibit No. 26-4 was admitted into evidence.)

22 MR. KILROY: Offered into evidence, your Honor.

23 THE COURT: Uh-huh.

24 MR. KILROY: Thank you.

25 BY MR. KILROY:

1 Q. Dr. Desai, at deposition while under oath, I asked you
2 would you agree Dr. Rosen acted fairly, appropriately, by
3 relying on an independent expert's evaluation as opposed to him
4 making the evaluation himself?

5 You stated: I agree.

6 Correct?

7 A. Answer again, if it is done the right way. And I don't
8 agree.

9 Q. You don't agree now. No, I understand you don't agree.

10 A. No, no, independent evaluation, first of all, already --
11 already knew the person. Already --

12 Q. There's not a question pending.

13 A. That's fine.

14 Q. And you'd agree that Dr. Rosen, as the chair of radiology
15 responsible for patient safety, should not ignore the report he
16 got from the independent reviewer, right?

17 A. Yes, if it's done the right way.

18 Q. Ma'am, you keep saying if it's done the right way.

19 A. Yeah.

20 Q. Don't you recall testifying under oath that no, he
21 shouldn't ignore it? There was no qualifier.

22 A. I already told you, yes. But -- but methodology was not
23 correct.

24 MR. KILROY: Counsel, page 95.

25 (Counsel conferred.)

1 MR. KILROY: That's what I'm asking. Do you want to
2 be heard?

3 MR. KOLMAN: Yes.

4 MR. KILROY: Can we have it for identification so the
5 judge can see what the objection is.

6 THE COURT: So is it 26-5?

7 MR. KILROY: Yes, your Honor.

8 (Sidebar as follows:)

9 THE COURT: Mr. Kolman.

10 MR. KOLMAN: Your Honor, there's an objection from
11 prior counsel in this transcript, and that objection was
12 preserved, so I am -- I'm asking that the objection be
13 sustained.

14 THE COURT: Overruled.

15 (End of sidebar.)

16 MR. KILROY: Now, I offer into evidence, your Honor,
17 26-5, excerpt from Dr. Desai's under-oath testimony.

18 THE COURT: So marked.

19 (Exhibit No. 26-5 was admitted into evidence.)

20 BY MR. KILROY:

21 Q. Dr. Desai, prior to trial under oath, you were asked: So
22 you agree that he -- he meaning Dr. Rosen -- should not ignore
23 the report, right?

24 And then I had to say, You have to answer, ma'am.

25 And you said, Yeah, he should not.

1 Did I read that correctly?

2 A. You do. But later on I found out the motivation was
3 wrong.

4 Q. And, Dr. Desai, you're not actually claiming that the
5 independent reviewer's analysis was discriminatory in any way,
6 are you?

7 A. Discrim- -- all I'm saying, two parts. One is personnel
8 was already known to each other. So it's not correct.

9 And the second, the methodology was not correct.
10 That's all I'm saying.

11 Q. All right. My -- my question though was different.

12 A. Yes.

13 Q. My question is about your claim. Your claim is
14 discrimination. What I'm saying is you are actually not
15 claiming to this jury that the independent reviewer's analysis
16 was discriminatory, are you?

17 A. It's not -- it's discriminatory.

18 Q. You've answered. Thank you.

19 MR. KILROY: Counsel, page 84.

20 MR. COMENZO: Thank you.

21 MR. KILROY: It's actually page 84, lines 21 to 24;
22 85, lines 1 to 3.

23 And there is an objection that you need to look at,
24 Tim.

25 MR. KOLMAN: Thanks.

1 (Plaintiff counsel conferred.)

2 MR. KOLMAN: May I be heard?

3 MR. KILROY: Could I have one, Tim?

4 MR. KOLMAN: Yeah.

5 Just for the witness.

6 (Sidebar as follows:)

7 MR. KOLMAN: Your Honor, this --

8 THE COURT: Hold up. Just a minute.

9 Go ahead, Mr. Kolman.

10 MR. KOLMAN: Your Honor, the objection here was for
11 cause for speculation. This is very early on in the case, and
12 he -- she could not possibly make a determination, and I also
13 think that the review at that point she didn't know if it had
14 anything to do with age. And so the impression being given
15 here and has been given all along, and I'm going to have to
16 correct it, is that the plaintiff made effectively legal
17 declarations about age discrimination at a -- at a time when
18 there had been -- there had been no discovery whatever. Now,
19 it's a legal conclusion, and it also calls for speculation, and
20 for that -- those reasons, I believe the objection should be
21 sustained.

22 THE COURT: I'm going to overrule the objection.
23 Obviously, you can pick this up on your redirect.

24 (End of sidebar.)

25 MR. KILROY: This is 26-6.

1 Your Honor, I would like to offer into evidence as
2 26-6 page 84 of the transcript, lines 21 to 24; and page 85,
3 lines 1 through 3.

4 THE COURT: So marked.

5 (Exhibit No. 26-6 was admitted into evidence.)

6 BY MR. KILROY:

7 Q. Dr. Desai, over two years after you had filed a claim
8 against UMass Memorial and Dr. Rosen, you were asked this
9 question: Do you believe Dr. Rosen made a decision to have 25
10 of your cases reviewed by an expert for quality purposes
11 because you were age 67 at the time?

12 Your answer: I don't think review has anything to do with
13 the age. Both don't go together.

14 Did I read that correctly?

15 A. Yes, they are separate as an entity doing 25 CTs, but the
16 motivation behind it --

17 MR. KILROY: Your Honor, I'll move to strike
18 everything after "yes."

19 THE COURT: Yes, that is stricken.

20 THE WITNESS: Is wrong.

21 MR. KILROY: Move to strike that as well, your Honor.

22 THE COURT: Yeah. Doctor, I'm going to ask you not to
23 volunteer information, please.

24 BY MR. KILROY:

25 Q. In fact, Dr. Desai, you know -- you know the independent

1 review had nothing to do with your age or any other
2 characteristic of yours; isn't that right?

3 A. Say that again, please.

4 Q. You know, you yourself know, the independent review had
5 nothing to do with your age or any other characteristics of
6 yours; isn't that right?

7 A. Yeah, in itself, it does not, if you just take as an
8 independent review, but it was used as a tool to terminate me.

9 MR. KILROY: Your Honor, I move to strike all after
10 "yeah, it was not."

11 THE COURT: No, I'll let that stand.

12 MR. KILROY: Page 88, counsel. I'm sorry. Page 86,
13 lines 6 to 10.

14 MR. COMENZO: 86?

15 MR. KILROY: 86, 6 to 10.

16 MR. COMENZO: 86, 6 to 10.

17 (Counsel conferred.)

18 MR. KILROY: I believe we have to mark it for
19 identification. It sounds like there may be an objection, your
20 Honor. 26 -- oops. 26-7.

21 (Sidebar as follows:)

22 THE COURT: Who is this a discussion between?

23 MR. KILROY: This is a question, and then she kept
24 answering.

25 THE COURT: Is that the defendant's statement?

1 MR. KILROY: No, that's her statement.

2 THE COURT: Defendant's statement, not counsels?

3 MR. KILROY: Your Honor, that's the plaintiff's
4 statement.

5 THE COURT: The plaintiff's. Thank you.

6 MR. KOLMAN: Your Honor, this -- this is being brought
7 in to show that Dr. Desai brought race, national origin,
8 disability, and they are no longer in this case. That's what
9 this is. And since we have voluntarily taken those away,
10 they're not in the province of the jury. This should be
11 sustained.

12 First of all --

13 THE COURT: Sustained.

14 MR. KILROY: Your Honor, may -- oh.

15 (End of sidebar.)

16 MR. KILROY: Counsel, page 88, lines 1 through 8.

17 (Plaintiff counsel conferred.)

18 MR. KILROY: For identification, Mr. Castles.

19 THE CLERK: Yeah.

20 (Sidebar as follows:)

21 THE COURT: Wait a minute.

22 MR. KILROY: It's -- it's lines 1 through 8, your
23 Honor. I'm sorry. No, it's lines 1 through 6.

24 THE COURT: Mr. Kilroy, I didn't have my ears in.
25 Start over, please.

1 MR. KILROY: It's lines 1 through 6, your Honor.

2 THE COURT: Go ahead, Mr. Kolman.

3 MR. KOLMAN: Your Honor, this is complete speculation
4 as to what she might or might not have done. And she doesn't
5 even understand the question, so I think it's unfair to bring
6 it in.

7 THE COURT: Overruled.

8 (End of sidebar.)

9 BY MR. KILROY:

10 Q. Dr. Desai, I'm going to show you page 88 of your
11 deposition transcript under oath, lines 1 through 6.

12 MR. KILROY: I'd offer this into evidence, please.

13 THE COURT: So marked.

14 (Exhibit No. 26-8 was admitted into evidence.)

15 THE CLERK: Is that 26-7?

16 MR. KILROY: 26-8.

17 THE COURT: 8?

18 MR. KILROY: I believe 7 was -- I believe you excluded
19 7, your Honor, so --

20 THE COURT: Yeah, 7 was excluded. You're right. It's
21 26-8.

22 MR. KILROY: May I have it published, please.

23 THE COURT: You may.

24 MR. KILROY: Thank you.

25 BY MR. KILROY:

1 Q. Dr. Desai, you were asked: Do you believe Dr. Rosen chose
2 not to speak with you before seeking an independent review
3 because of your age?

4 And your answer was, I don't know where the age comes
5 in. I still don't understand the question. I really don't.

6 Did I read that correctly?

7 A. Yes.

8 Q. You'd agree with me, Dr. Desai, that if an independent
9 reviewer has no idea as to the age of any of the radiologists
10 being reviewed, her report could not reflect age discrimination
11 in any way, right?

12 A. According to Dr. Rosen, because I didn't pay attention to
13 the age and all that, yes. Yes.

14 Q. Okay. And with respect to the methodology whereby
15 Dr. Rosen chose 25 chest CTs to be pulled randomly of yours and
16 25 of a control group to be pulled randomly from other
17 radiologists, you're not claiming that he chose that
18 methodology because you were -- because of your age, are you?

19 A. It does not have anything to do with age, no.

20 Q. It has nothing to do with age, right?

21 A. No.

22 Q. And, Dr. Desai, you were involved in interviewing
23 Dr. Karin Dill to become the next division chief of
24 cardiothoracic radiology at UMass, right?

25 A. Yes.

1 Q. And as part of that you reviewed her CV, didn't you?

2 A. Yes.

3 Q. You were aware that she had received advanced training
4 specific to cardiothoracic radiology through three separate
5 fellowships, right?

6 A. Yes.

7 Q. And you were aware she was widely published in the field
8 of cardiothoracic or chest radiology, right?

9 A. Yes.

10 Q. You were aware she had multiple leadership positions
11 within professional societies dedicated to the advancement of
12 radiology, correct?

13 A. Yes.

14 Q. And were you aware she had expertise in reading MRIs
15 within the field of chest radiology, right?

16 A. Yes.

17 Q. And that's expertise you don't have, correct?

18 A. I cannot tell. I have a pacemaker so I will die if I do
19 the -- go in the room.

20 Q. And you agree that Dr. Dill's qualifications to be
21 division chief of chest radiology at UMass were superior to
22 yours, don't you?

23 A. Please repeat the question.

24 Q. Sure. You agree Dr. Dill's qualifications are superior to
25 your qualifications to be division chief of chest radiology,

1 correct?

2 A. As far as what I meant by that that she has more
3 experience in the cardiac CT and MRI; otherwise, I have more
4 experience.

5 Q. Can you -- can you just answer my question, ma'am.

6 Do you believe your qualifications are superior to
7 Dr. Dill's to be division chief of chest radiology?

8 A. Instead the need here, no.

9 Q. Nonetheless, you were upset you weren't asked by Dr. Rosen
10 if you wanted to become the next division chief instead of
11 Dr. Dill, right?

12 A. Yes.

13 Q. Even though you agree Dr. Dill's more qualified, you think
14 Dr. Rosen should have asked you if you wanted to be the
15 division chief of chest, right?

16 A. He should have asked.

17 Q. So qualifications don't matter?

18 A. I didn't say that.

19 Q. Well --

20 A. He should have asked, as a senior person in the
21 department, which all the duties are not doing it. And
22 sometimes people say no after they ask, but it is common
23 courtesy, I would think. And it has happened in a different
24 division, too.

25 Q. So even if he believes you are not qualified for the job,

1 he should have asked you to take the job; is that your
2 testimony to the jury?

3 A. Yes, he should have asked.

4 Q. And you just thought it's common courtesy because of your
5 seniority?

6 A. Yes.

7 Q. And likewise, you think it's common courtesy he shouldn't
8 take action if he believes your quality is substandard, right?

9 A. If it is really a quality problem. I don't think I have a
10 quality problem. It was just used as a tool to terminate me.

11 Q. Who decides within a -- a physician practice, who decides
12 if a --

13 THE COURT: Get closer to the microphone.

14 MR. KILROY: Oh, I'm sorry, your Honor.

15 Q. Who decides in the physician practice if a subordinate's
16 quality is substandard?

17 MR. KOLMAN: Objection.

18 Q. The individual or the superior?

19 THE COURT: Overruled. You may answer.

20 THE WITNESS: Superior can choose.

21 BY MR. KILROY:

22 Q. And that's what -- and that's what happened here, right?

23 A. Yes.

24 Q. And you admire, don't you, that Dr. Rosen wants to look
25 out for patient safety?

1 A. I do too.

2 Q. That didn't answer my question, ma'am. You agree --

3 A. Yeah, he has a responsibility to check.

4 Q. But do you admire the fact that he is looking out for
5 patient safety?

6 A. Yes.

7 Q. And you expect him to do that, don't you?

8 A. Yes.

9 Q. It would -- in fact, he wouldn't be qualified for his job
10 if he wasn't looking out for patient safety, right?

11 A. Yes.

12 Q. And you would agree with me that in having to look out for
13 patient safety a chair of a department has to make some
14 difficult decisions sometimes, doesn't he?

15 A. Difficult, but right when he should make the right one.

16 Q. And -- oh, he should make the right one?

17 A. Right decision how to do it and how just to get persons.

18 Q. And -- and the right decision would be the decision you
19 would have made?

20 A. No, I'm not saying that. I'm not saying that.

21 Q. And even though you thought you should have been asked to
22 do -- to become the division chief, you don't even know the
23 division chief job duties, do you?

24 A. Why do you say that? I don't have previous experience,
25 yes, I don't.

1 Q. With respect to call coverage, you demanded to be removed
2 from performing call coverage, right?

3 A. Yes, sir, to reduce it.

4 Q. You wanted a special exception made for you based on the
5 number of years you've worked at UMass Memorial, correct?

6 A. No, it was done in the past. Dr. Balikian was call
7 exempt.

8 Q. But you didn't meet the requirements that Dr. Balikian
9 met, did you?

10 A. I did, because if you look at the document.

11 Q. Ma'am, were you over 72 years old at the time?

12 A. But that only applies to the incentive, and we have the
13 proof.

14 Q. Can you answer my question, please. Were you over 72?

15 MR. KOLMAN: Objection.

16 THE COURT: Wait. Wait. Hold up.

17 So, Doctor, I'm going to ask you to wait for the
18 question --

19 THE WITNESS: Okay.

20 THE COURT: -- and only answer the question that's
21 asked.

22 And, Mr. Kilroy, I'm going to ask you to wait until
23 the witness completes her answer before you ask another
24 question.

25 MR. KILROY: Fair enough. Thank you, your Honor.

1 THE COURT: Go ahead. Let's have a question.

2 THE WITNESS: Sorry.

3 BY MR. KILROY:

4 Q. And you weren't a full professor, were you?

5 A. No.

6 Q. And Dr. Balikian was over 72, right?

7 A. Yes.

8 Q. And he was a full professor, wasn't he?

9 A. Yes.

10 Q. And you're not aware of anyone who is under the age of 72
11 and who wasn't a full professor, whoever was exempted from
12 their fair share of call coverage in the radiology department;
13 isn't that true?

14 A. I'm not aware.

15 Q. And that's over 80 radiologists, right?

16 A. Yes.

17 Q. But you wanted to be treated special and be exempted,
18 right?

19 A. No, I didn't say.

20 Q. You demanded it?

21 A. I did. I did because the -- because the policy says it,
22 if you -- if I interpret it correctly.

23 MR. KILROY: I'll move to strike after "I did."

24 THE COURT: Yes, that's stricken. The jury is to
25 disregard it.

1 BY MR. KILROY:

2 Q. And after being told that they had discontinued the
3 practice of allowing you to sell call weekends, you continued
4 to demand to sell call weekends, didn't you?

5 A. It's not continued. I asked. Because one year I didn't
6 know it was discontinued until when he said yesterday that
7 after two years it was stopped. There's nothing wrong with
8 asking for -- see, because I -- it was difficult, I already
9 told you earlier, and people were ready for the money. I was
10 paying from my own salary, and some people needed extra money
11 so they did it for me. But the next year I didn't know it was
12 stopped. So I did ask, yes, I did.

13 Q. And after you were told it was stopped, you continued to
14 ask, didn't you?

15 A. Huh?

16 Q. After you --

17 A. No, I did not. I did not.

18 Q. Okay.

19 A. Only once I said, but I only found out yesterday that it
20 was stopped after two years. I didn't have any knowledge. On
21 the contrary I was upset that why did he say no. The person I
22 asked was willing to do as many call I wanted to do.

23 Q. Dr. Desai, you began treating with a psychiatrist by the
24 name of Dr. Mark Cutler May 28th of 2020, correct?

25 A. Yes.

1 Q. And your employment termination was March of 2018,
2 correct?

3 A. Yes.

4 Q. You didn't seek any treatment for emotional distress from
5 the time of your notice of termination in March of 2018 until
6 May of 2020, correct?

7 A. See -- yes, see, my -- when I left the job was March 17,
8 2019. So at that time I had a lot of support from my family,
9 but then with the COVID and all that, it was becoming
10 difficult. So my husband and my daughter actually called the
11 psychiatrist.

12 Q. Dr. Desai, do you remember being served a set of questions
13 in this case known as interrogatories?

14 A. Yes.

15 Q. And do you remember when you received these?

16 A. No, I do not.

17 THE COURT: Why don't we save these until tomorrow.

18 MR. KILROY: Thank you, your Honor.

19 THE COURT: All right. We'll see you guys tomorrow.
20 Have a great night. Don't talk about the case with anyone,
21 including each other.

22 Doctor, you can step down.

23 THE WITNESS: Thank you.

24 (At 12:59 p.m., the jury left the courtroom.)

25 THE COURT: How much longer?

1 MR. KILROY: Probably a -- 45 minutes, your Honor,
2 half hour, 45 minutes.

3 THE COURT: And on redirect, Mr. Kolman?

4 MR. KOLMAN: Maybe the same, Judge.

5 THE COURT: Okay. And then who?

6 MR. KILROY: We have -- where we're trying to
7 coordinate with them now, Dr. Korgaonkar and Dr. Mowlod -- not
8 doctor -- Randa Mowlod.

9 THE COURT: Thank you.

10 MR. KILROY: Two fact witnesses.

11 THE COURT: Did you guys have any follow-up on that
12 discussion we had?

13 MR. KILROY: We did, your Honor.

14 THE COURT: And?

15 MR. KILROY: I haven't heard back.

16 THE COURT: When's that going to happen? Heard back
17 from your brother?

18 MR. KILROY: Yes.

19 MR. KOLMAN: Judge, I have to say that --

20 THE COURT: No, not on the record.

21 MR. KOLMAN: Well, I was surprised. The answer is no.

22 THE COURT: Okay. All right. I've got you at 6 hours
23 and 27 minutes.

24 I've got you at 5 hours and 29 minutes.

25 MR. KILROY: Thank you, your Honor.

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THE COURT: See you tomorrow.
MR. KILROY: See you tomorrow.
(At 1:02 p.m., court was adjourned.)

C E R T I F I C A T E

I, Marianne Kusa-Ryll, RDR, CRR, do hereby
certify that the foregoing transcript is a true and accurate
transcription of my stenographic notes before the Honorable
Timothy S. Hillman, to the best of my skill, knowledge, and
ability.

/s/ Marianne Kusa-Ryll12/13/2022

Marianne Kusa-Ryll, RDR, CRR

Date

Official Court Reporter